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REPORTER'S RECORD
VOLUME 34 OF 55
TRIAL COURT CAUSE NO. 1184294D
COURT OF APPEALS NO. AP-76,596

STATE OF TEXAS) (IN THE 432ND JUDICIAL
) (
VS.) (DISTRICT COURT OF
) (
JOHN WILLIAM HUMMEL) (TARRANT COUNTY, TEXAS

TRIAL ON THE MERITS

On the 14th day of June, 2011, the
following proceedings came on to be heard in the
above-entitled and -numbered cause before the Honorable
Ruben Gonzalez, Jr., Judge Presiding, held in Fort
Worth, Tarrant County, Texas:

Proceedings reported by machine shorthand.

ANGIE TAYLOR, CSR, RPR
Official Court Reporter
432nd DISTRICT COURT

ORIGINAL

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PROCEEDINGS

(June 14, 2011 ~ 8:59 a.m.)

(Open court, Defendant present, no jury)

THE COURT: Are both sides ready to

proceed?

MR. BRISSETTE: The State's ready.

MR. CUMMINGS: Yes, Your Honor.

THE COURT: State, Defense, do you have any witnesses present in the courtroom?

MR. BRISSETTE: No, Your Honor.

MR. CUMMINGS: It's my understanding that we have one that's been removed from the witness list, and I have no problem with that, and we've discussed it.

THE COURT: All right. Very well.

Let's go ahead and bring in the jury.

(Jury present)

THE COURT: Good morning. Please take your seats.

State, call your next witness.

MR. BRISSETTE: Lieutenant Andy Cleveland.

THE COURT: Lieutenant Cleveland, please.

(Witness enters courtroom)

THE COURT: Lieutenant Cleveland, would you please raise your right hand?

(Witness sworn)

13

THE COURT: Please be seated, sir.

State, you may proceed when you're ready.

MR. BRISSETTE: Thank you, Your Honor.

ANDY CLEVELAND,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRISSETTE:

Q. Sir, can you introduce yourself to the jury?

A. My name is Andy Cleveland. I'm a lieutenant with the Kennedale Fire Department.

Q. Lieutenant Cleveland, what does it take to become an officer in a fire company nowadays?

A. Time and service, usually promotional exams, further education.

Q. Okay. What was your basic education to get into fire services?

A. I -- it was the basic rookie academy, which the Texas Commission on Fire Protection mandates how many hours that is. I'm not sure how many hours it is now, but I know it has gone up.

Q. When -- when did you go to the fire academy?

A. 1998 into '99.

Q. And how long have you been -- are you certified by the State of Texas as a firefighter?

A. Yes, sir.

Q. Are there different levels of certification?

A. There are. There's a -- a basic and an intermediate, advanced, then a master. Each level has different educational requirements and time served.

Q. And how many years have you been in the fire service?

A. I've been a paid firefighter for almost 12 years with the City of Kennedale.

Q. How long have you been in the fire services volunteer and paid?

A. I started as a volunteer firefighter in '92, and then -- and then went to the fire academy in '98, '99.

Q. What level of fire fighting certification do you hold, sir?

A. I carry an advanced certification.

Q. There's also certifications in the State of Texas for advanced life support or life care at the scene, is there not?

A. Yes; there's different levels at the --

THE REPORTER: I'm sorry?

THE WITNESS: There's different levels for an EMT certification also.

Q. (BY MR. BRISSETTE) And what level do you currently hold?

15

A. I currently hold paramedic.

Q. And where is that in relationship? Is EMT the basic?

A. EMT is basic and then intermediate and then paramedic.

Q. How many fire trucks or fire apparatus does the City of Kennedale have?

A. Currently we have two -- two engines, a brush truck, a squad truck, kind of a utility truck, and two ambulances.

Q. Are both engines in service at one time?

A. Generally, it's just staffed by one. The other one will be in reserve status.

Q. And so we can get the basics, because we are not firefighters this morning, what's the difference between an engine and a quint?

A. A quint serves five capabilities. It carries water, carries ground ladders, carries hose. It has a pump, and then it also has an aerial device on it, a ladder. And an engine -- an engine does not carry the ladder on top.

Q. So does Kennedale have a quint or an engine?

A. We recently traded in our quint on an engine -- on a new engine.

Q. Back in December of 2009, what did Kennedale

1 have?

2 A. We had a quint and an engine.

3 Q. Specifically on the shift for December 17th,
4 2009, what date did you come on -- on shift that day?
5 What time? Excuse me.

6 A. 7:00 o'clock in the morning.

7 Q. How are fire shifts -- how's the fire community
8 work their shift?

9 A. Most departments have a three -- three shifts,
10 A, B and C shifts, starts at 7:00 o'clock in the morning
11 and ends at 7:00 o'clock the next morning.

12 Q. So you're 24 on and 48 off then?

13 A. Yes, sir.

14 Q. So you came on at 7:00 o'clock in the morning
15 on December the 17th?

16 A. Correct.

17 Q. You would have been relieved at 7:00 o'clock on
18 the 18th, then?

19 A. That's correct.

20 Q. Did you have an occasion on the early morning
21 hours of December 18, 2009, to be toned out to a fire?

22 A. Yes, sir.

23 Q. What does it mean to be toned out to a fire?

24 A. At nighttime the -- well, basically, at any
25 time during the day when we're alerted in the station,

17

1 there's speakers in the ceiling that -- that will open
2 up, and you'll get an alert tone, and then you'll get
3 the dispatch information.

4 Q. If the tone came out at 12:18 and you were en
5 route by 12:20 and on scene by 12:24 a.m., what's taking
6 place from the time the tone goes out to the time you
7 radio dispatch that you're on scene? What are you
8 doing?

9 A. I, myself, was asleep at the time. Got up,
10 went to the truck, put my turnout gear on, got on the
11 truck. The other guys -- I don't know if anybody else
12 was up at that time, but same activities, go to the
13 truck, get your -- get your equipment on in the truck
14 and -- and respond.

15 Q. Everybody's seen a fire truck go down the road.
16 You're the officer on that engine or that quint company
17 that night. What position do you sit in?

18 A. In the passenger front seat.

19 Q. Who sits behind the wheel?

20 A. The driver, engineer.

21 Q. So the driver is slash -- it's known as an
22 engineer too, is it not?

23 A. Yes, sir.

24 Q. And how many firefighters did you have riding
25 in the back?

1 A. I had one firefighter in the back of the truck.

2 Q. Did you also have a rescue or a paramedic squad
3 that night?

4 A. Our ambulance did respond with us.

5 Q. And are they not only EMTs and paramedics, but
6 also trained firefighters?

7 A. Yes, sir.

8 Q. So you have a force multiplier in effect of two
9 additional firefighters; is that correct?

10 A. That's correct.

11 Q. Is the ambulance also available? If there were
12 any lifesaving care needed, you had a mobile intensive
13 care unit there, basically?

14 A. Yes.

15 Q. What's turnout gear?

16 A. It's the bunker gear, the firefighting
17 protective clothing that we wear.

18 Q. And why do you need that?

19 A. Protect you from heat, sharp objects, anything
20 you can brush up against that's going to hurt you or
21 there's in the atmosphere that's going to hurt you.

22 Q. In relationship to 600 Little School Road in
23 Kennedale, Tarrant County, Texas, where is your fire
24 station located at?

25 A. We are west of that address. I don't know the

19

1 exact mileage.

2 Q. On December the 17th, when you left the station
3 and -- and made the turn toward the structure fire, were
4 you able to see anything in the distance?

5 A. We could see a column of smoke, yes.

6 Q. Based on that, did you or your driver make any
7 additional calls for getting mutual aid?

8 A. My driver requested mutual aid from Forest Hill
9 and Mansfield.

10 Q. There are different phrases or different terms.
11 What's an alarm assignment for a structure fire like
12 this?

13 A. Are you asking what the definition of alarm
14 assignment is?

15 Q. Yes. What do you -- what comprises -- how many
16 elements of equipment would you typically want to have
17 as an officer for a one-alarm assignment on a structure
18 fire like this?

19 A. For us, in the City of Kennedale, it's -- it
20 would be three -- three firefighter or three
21 firefighting pieces of apparatus, whether they be
22 engines or quints, and then -- then our ambulance also.

23 And then we can add onto that as we need to.

24 Q. And would that be a phrase that people may have
25 heard, having a second or third alarm called in?

1 A. That's correct.

2 Q. Who did the mutual aid come from that night?

3 A. The City of Forest Hill and the City of
Mansfield.

4 Q. Was your fire chief at the station and on duty
5 with you that night?

6 A. No.

7 Q. Were you the highest ranking officer then for
8 awhile at the scene from Kennedale?

9 A. Yes.

10 Q. As you approach 600 Little School Road, what
11 are your observations as you get closer?

12 A. We could see the large column of smoke. As we
13 were getting closer to it, you could see a -- a glow
14 coming from that general area. After you make the
15 left-hand turn on Sublett Road, it really didn't take
16 too far to start seeing fire at that point. It's a
17 pretty clear shot.

18 Q. As part of your obligations as an officer in
19 the fire company, do you know the placement of the fire
20 hydrants that are in your city?

21 A. I'm familiar with them, yes.

22 Q. Is that something you have to take into
23 consideration as you're arriving on scene?

24 A. Yes.

21

1 Q. What is an initial size-up while you're still
2 on the quint? What do you try to do as the officer?

3 A. Basically, when we give a -- a size-up coming
4 up on a scene, we'll announce where we are and what
5 we're seeing and what our initial actions are.

6 Q. Are you -- as the officer, are you and the
7 driver, the engineer, trained to try to take a view the
8 best you can of a structure fire or building as you pull
9 up to it?

10 A. Yes, sir. We try to get three -- be able to
11 see three sides of it, so if it means pulling past a
12 little ways to see the next side, then we'll try to do
13 that.

14 Q. In the fire service, do you name the sides of
15 the structure so it's easy to communicate with fellow
16 firefighters that are coming in?

17 A. Yes, sir. They're named -- we use A, B, C and
18 D in a clockwise rotation, A being in the front.

19 Q. And is that part of a unified command system
20 that firefighters in North Texas are trained upon?

21 A. Yes, sir.

22 Q. What was your size-up of the D, A and B sides
23 of the structure before you got off of the quint?

24 A. First we noticed heavy fire venting from the D
25 side and then fire venting also on the AB corner, which

1 was an open door.

2 Q. Did you see -- note anything else on the D side
3 itself as you're driving up -- excuse me -- to the B
4 side as you pulled past? Just fire coming from the
5 front door on --

6 A. The front door at the AB corner.

7 Q. When you -- take us through -- take the jury
8 through. You stopped the quint. What is the
9 firefighter -- what are you -- what are you doing at
10 that point? What's going on with the quint?

11 A. When we arrive on scene, what we'll do is --
12 actually, prior to getting off the apparatus, I'll tell
13 the firefighter initially what he needs or, you know, he
14 might be already yelling forward asking, Hey, you want
15 me to do this or do this.

16 But when we dismount, the first -- my first
17 job is -- is to do a walk-around of the -- of the
18 building just to get an idea of what all four sides look
19 like, see if there's any hazards, see if there was
20 something that we missed on the way in; and then
21 usually, by the time I get back around to the front
22 again, line -- hose line has already been pulled and --
23 and the guys are masking out ready to go.

24 Q. You mentioned that the firefighters yelling
25 forward. Is it loud on your quint?

23

1 A. Yes.

2 Q. Is it loud to be standing around your quint?

3 A. Yes.

4 Q. Is it hard to talk or be heard standing around
5 your quint or any close proximity?

6 A. Sometimes, yes.

7 Q. If you have more than one quint on the scene,
8 say you have three quints in a parking lot, does that
9 become loud as well?

10 A. Yes, sir.

11 Q. Is a fire -- a structure fire, does it create
12 its own noise as things are burning and being consumed
13 in the fuel packages?

14 A. It does, yes.

15 Q. What does it mean to mask up?

16 A. It's to put on your self-contained breathing
17 apparatus mask, which attaches to the tank that we wear
18 on our back, carries atmosphere, compressed air.

19 Q. Once you did your initial size-up, what was
20 your plan of attack?

21 A. The first hose line was going to go in the
22 front door, and then a secondhand line was going to also
23 go in the front door, and we were going to split left
24 and right because initially we had fires at two ends of
25 the building. So we were going to do a -- kind of a

1 two-prong attack until such time as that front room or
2 the porch area became involved also, and then -- then it
3 became to a point where we're just going to have to
4 knock it down and then get in.

5 Q. When -- you mentioned two fires. When you were
6 on the C side, the Charlie side, the backside of the
7 structure, did you -- as part of your training and
8 experience, do you make observations as to whether or
9 not any doors to the structure are open or closed?

10 A. Yes, sir.

11 Q. And did you make any observations that night?

12 A. Yes. The -- the door that was on the C side of
13 the structure was open.

14 Q. Your 12 years plus of fire experience, were you
15 able to look inside that and make any observations?

16 A. Yes. I was able to look through -- which side
17 is exactly right near the kitchen, and I was able to see
18 all the way through to the A side through the living
19 room.

20 Q. Does your quint have a light pack on the side
21 of it where it can light up whatever it's looking at?

22 A. It -- yes, it had a scene light.

23 Q. Were you able to see that -- the lights from
24 the quint through the structure looking through the back
25 door on the Charlie side, the C side?

25

1 A. I'm not sure that those were the scene lights,
2 but I could definitely see the emergency lights.

3 Q. When you look at that as an -- as an officer
4 with the fire company and you can see through a
5 structure and you know you have fire on either end of
6 that, do you draw any conclusions from that?

7 A. I -- I thought it was a little suspicious
8 that -- that, you know, two separate fires with nothing
9 in the middle.

10 Q. Were you able to get a -- a good hydrant supply
11 to start the attack?

12 A. There was a hydrant just past the house, which
13 my engineer drug a line to and hooked up to while we
14 were getting the first line into place.

15 MR. BRISSETTE: May I approach the witness,
16 Your Honor?

17 THE COURT: You may.

18 Q. (BY MR. BRISSETTE) Lieutenant, if I could get
19 you to look over here, I'm going to show you what's been
20 marked for identification purposes as State's Exhibit
21 No. 5. It's a poster board that has a color laminate on
22 top of it. You've had a chance during trial prep to
23 look at State's 5 down in our office on the fourth
24 floor, correct?

25 A. That's correct.

1 Q. Is this a fair and accurate depiction of the
2 structure that you fought the fire out in the early
3 morning hours of December 18, 2009, at 600 Little School
4 Road, Kennedale, Tarrant County, Texas?

5 A. Yes.

6 Q. Would this aid you in your testimony today
7 before the jury?

8 A. I'm sorry?

9 Q. Would this aid you in your testimony today
10 before the jury to show us where you went and made your
11 attack and found certain things?

12 A. Yes.

13 Q. Now, there's different color codes on here. Do
14 the color coding boundaries correspond to individual
15 rooms to aid you and make it easier to talk to the jury
16 about which rooms you were in?

17 A. Yes.

18 MR. BRISSETTE: We tender to Defense
19 State's 5 and offer it for all purposes.

20 MR. MOORE: Judge, I don't have any
21 objection.

22 THE COURT: State's Exhibit 5 is admitted.
23 (State's Exhibit No. 5 admitted)

24 MR. BRISSETTE: May it be published as
25 well, Your Honor?

27

1 THE COURT: It may.

2 Q. (BY MR. BRISSETTE) Lieutenant, I'm going to
3 show you what's been marked for identification purposes
4 as State's Exhibit No. 4. Do you recognize the image
5 that's depicted in State's Exhibit 4?

6 A. Yes.

7 Q. State's Exhibit 4 has a opaque layer to it as
8 the front sheet. Do you recognize the blueprint that's
9 contained on State's 4? Is it the same drawing in the
10 smaller size from State's 5?

11 A. Yes.

12 Q. And does it overlay a satellite image of the
13 actual structure prior to the fire?

14 A. Yes, it does.

15 Q. Would this also aid you in your testimony
16 before the jury for what you did in and around the
17 structure?

18 A. Yes.

19 MR. BRISSETTE: We tender State's 4 to
20 Defense, offer it for all purposes.

21 MR. MOORE: We have no objection, Your
22 Honor.

23 THE COURT: State's Exhibit 6 is admitted.

24 MR. BRISSETTE: 4, Your Honor.

25 THE COURT: I'm sorry, 4. Thank you.

1 (State's Exhibit No. 4 admitted)
 2 MR. BRISSETTE: May it be published as
 3 well, Your Honor?

THE COURT: It may.

4 Q. (BY MR. BRISSETTE) Judge, may the lieutenant
 5 step down?

THE COURT: He may.

6 MR. BRISSETTE: Judge, is it okay if you
 7 inquire of the jury if they can all see the exhibit?

THE COURT: Sure.

8 Do the jurors all see the exhibits?
 9 Anybody that cannot see the exhibit?

The Judge can't see the exhibit, though.

10 Q. (BY MR. BRISSETTE) Lieutenant, so Angie
 11 doesn't get upset at us, you need to keep your voice up
 12 when you're down here so she can hear everything. Okay?

A. Okay.

13 Q. If you can take this pointer and approach
 14 State's 5 and show us approximately the area where --
 15 where 600 Little School Road is first on State's 5, and
 16 then show us where the open door was and the back when
 17 you did your initial walk-around.

18 A. Okay. This is the door that I found opened
 19 when I did my walk-around, starting from the A side and
 20 going around this way. And you were asking where Little

29

1 School Road is?

2 Q. Yes, sir.

3 A. And Little School Road runs north/south right
 4 here.

5 Q. So at the bottom of State's 5 is where the
 6 street Little School Road would be; is that correct?

A. That's correct.

8 Q. And at the top you mentioned a doorway. Was
 9 that right below the word "east" on State's 5?

A. Yes, sir.

11 Q. And when you did your initial size-up as you
 12 pulled in, you came from Sublett, I believe?

A. That's correct.

14 Q. Where did you see fire emanating from the
 15 structure as you pulled up initially?

16 A. Initially we saw fire venting out at this
 17 window on the CD corner, and then -- and then recognized
 18 this window -- or this open doorway right here.

19 Q. Your quint is parked in front of what was a
 20 driveway at one point, was it not?

21 A. Correct. There's a driveway right here on the
 22 B side.

23 Q. And you laid attack lines to start your attack
 24 where?

25 A. The first line went -- went here to the porch,

1 and we were to make entry into this doorway right here.

2 Q. And were you able to make entry through that
 3 door to begin with?

4 A. My firefighter off the -- off the quint and the
 5 two firefighters off the ambulance had to force this
 6 door here and then found something -- a chair that was
 7 butted up against that door blocking -- blocking them
 8 from getting in. They were able to move it pretty
 9 quick.

10 Q. How about the doorway on the AB corner?

11 A. This doorway here was opened. It was forced
 12 opened by Officer Worthy prior to our arrival, which he
 13 reported to me when we arrived on scene.

14 Q. Did your Kennedale firefighters make the attack
 15 to that room, or did another engine company make the
 16 attack to that room?

A. To?

Q. To the AB corner room, the orange room.

19 A. We had -- Kennedale firefighters made an attack
 20 to this room also initially.

21 Q. You -- when you're standing at the doorway,
 22 what's the atmospheric conditions like? When you're
 23 looking inside, what do you see in that doorway?

24 A. This -- this room was completely on fire.
 25 There was heavy smoke venting out the top of the door

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1 frame.

2 Q. Lieutenant, I'm going to show you what's been
 3 marked for identification purposes as State's 402, 403
 4 and 404. Do you recognize these still images from Unit
 5 47 from the Kennedale Police Department?

A. Yes.

7 Q. In fact, have you seen the video that these
 8 still images came from?

A. I have.

10 Q. Are these a fair and accurate depiction of the
 11 fire that you saw during your initial walk-around in the
 12 first efforts to suppress it on December 18, 2009, at
 13 600 Little School Road?

A. It is.

15 MR. BRISSETTE: We tender to Defense 402,
 16 403 and 404 and offer them for all purposes.

17 MR. MOORE: I don't have any objection,
 18 Your Honor.

19 THE COURT: 402, 403 and 404 are admitted.
 20 (State's Exhibit Nos. 402-404 admitted)

21 MR. BRISSETTE: May they be published as
 22 well, Judge?

23 THE COURT: You may.

24 Q. (BY MR. BRISSETTE) Lieutenant, in -- in
 25 order -- remember to keep your voice up.

1 In 402 -- if you could use the same
2 pointer, and I'll do these. We're going to do the first
3 half, and then we'll slide down and do this half.

4 When we're looking at this photo, where is
5 the orange room, the AB room, and what do we see here in
6 this?

7 A. That would be on this corner of the building
8 right here, and that would be fire venting out of that
9 doorway.

10 THE REPORTER: I'm sorry, sir. I need for
11 you to speak up.

12 THE WITNESS: This is the room in question
13 right here with the open doorway, and that's fire
14 venting out of the open door.

15 Q. (BY MR. BRISSETTE) In 403, at some point
16 during the early efforts to put out this fire, did fire
17 emanate from the -- the window and the red room here on
18 State's 5, the AD corner -- the AD corner room?

19 A. Yes, it did.

20 Q. And do you see that indicated here on State's
21 403?

22 A. That would -- that would be in this room right
23 here.

24 Q. Will you show this half of the jury as well?

25 A. It would be this room right here.

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1 Q. Lieutenant, in State's Exhibit 404, you
2 mentioned at one point the front porch caught on fire?

3 A. Yes.

4 Q. Do you see that indicated here to the right of
5 the police officer in State's 404?

6 A. Yes.

7 Q. And can you show that to the members of the
8 jury as well?

9 A. This would be the front porch right there.

10 Q. Did that hamper some of your efforts to gain
11 entry through that front door after you were able to get
12 it open?

13 A. Yes, it did. The fire had to be knocked down
14 to make entry into that room. That's the porch.

15 Q. Let's see if I can find you a way back to the
16 witness stand.

17 A. Okay.

18 Q. Lieutenant, in these plastic sheets -- these
19 are slippery, so they'll slide everywhere.

20 I'll show you what's been marked for
21 identification purposes as 6, State's 7, 8, 9, 10, 11
22 and 12, 13, 14, 17, 18, 19, 20, 21 and 22. You had a
23 chance this morning to look at these, correct?

24 A. Yes, sir.

25 Q. And are they a fair and accurate depiction of

1 the structure there at 600 Little School Road?

2 A. They are.

3 Q. Taken during the -- the time that the Kennedale
4 Fire Department and police department are out there as
5 part of this investigation?

6 A. Correct.

7 MR. BRISSETTE: Your Honor, at this time
8 the State would tender to Defense 6 through 14,
9 inclusive, and then 17 through 22, inclusive, and offer
10 those for all purposes.

11 MR. CUMMINGS: Your Honor, we have no
12 objection to the offered exhibits.

13 THE COURT: The Court admits State's
14 Exhibit 6 through 14, inclusively, and exhibits --
15 State's Exhibit 17 through 22, inclusively.

16 (State's Exhibit Nos. 6-14, 17-22 admitted)

17 MR. BRISSETTE: May they be published as
18 well, Your Honor?

19 THE COURT: They may.

20 Q. (BY MR. BRISSETTE) State's Exhibit 6,
21 Lieutenant, just the stop sign there by the intersection
22 giving you the street addresses, correct?

23 A. Yes, sir.

24 Q. State's 7, what are we looking at here, sir?

25 MR. BRISSETTE: Judge, with the Court's

35

1 permission, can we take down the center light switch?

2 THE COURT: Yes, you may.

3 Q. (BY MR. BRISSETTE) So, Lieutenant, what are we
4 looking at here on State's 7?

5 A. It appears at this point in time that the --
6 the fire has been knocked down. There's obviously still
7 smoke venting from the house right here. I can't tell
8 on the -- the AB over here if there's anything still
9 venting there. We're probably taking a little rehab
10 break and getting a drink and...

11 Q. Let me ask this question: Is that the
12 structure that we've been talking about --

13 A. Yes, sir.

14 Q. -- that's in the center of that photo?

15 The reflective stripes that we see there
16 is -- are those cones on the road there?

17 A. Those are cones.

18 Q. What are the reflective objects we see in the
19 yard? Are those firefighters?

20 A. Those are firefighters.

21 Q. State's Exhibit No. 8, what are we looking at
22 here, sir?

23 A. It's the -- we -- at the AD corner of the
24 building, there are some cones on the ground around that
25 power pole because the power line, the service line

1 dropped from the house.

2 Q. And you've had occasion to see footage from
3 Josh Worthy's vehicle, Patrol Car 51. You saw the power
4 line explode or come off of the house weathervane; is
5 that correct?

6 A. Yes, sir.

7 Q. Is that commonplace, if there's direct fire
8 impingement to it for a significant amount of time, that
9 it will fail?

10 A. Yes.

11 Q. Service line to a house, is that made out of
12 thick copper wire?

13 A. I'm not sure what its actually, you know -- its
14 components are, but it's -- it's a heavy-gauge wire.

15 Q. And for it to fail, the wire would have to melt
16 or something have to take place for it to break loose?

17 A. Yes.

18 Q. Is that one of the hazards that you talked
19 about when you do your initial walk-around to make sure
20 the firefighters don't step on a live line?

21 A. That's correct.

22 Q. Water and electricity don't mix well, do they?

23 A. No, sir.

24 Q. Looking at State's 5 on the screen, can you
25 show us where this photo was taken? Where were you at

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1 with State's 8?

2 A. That was just the previous photo?

3 Q. Yes, sir.

4 A. That would be over in this area right here.

5 Q. So that's that corner there that we just saw,
6 yes, on State's 5?

7 A. That's correct.

8 Q. State's Exhibit No. 9, sir, what are we looking
9 at here?

10 A. This would be the A side of the structure.
11 This is the porch area where they attempted to put the
12 first line with service.

13 Q. In fact, is that the chair that they had to get
14 out of the way to lay in there in the front yard?

15 A. You're asking about the rolling chair right
16 here?

17 Q. Yes, sir.

18 A. I -- I'm not aware what -- I never saw what was
19 actually blocking the door. It was reported to me.

20 Q. State's Exhibit No. 10, it appears -- it
21 appears to have some smoke still emanating from a
22 structure, but people aren't wearing breathing
23 apparatus. Can you explain that, sir?

24 A. They're outside the structure at this time.

25 Obviously, if you're -- even outside, if you -- if

1 you're standing in the smoke, you're -- you know, you're
2 still breathing in the toxins.

3 Q. You -- which is the back right on this in
4 State's 10? We're over here. If I take you back to the
5 map, State's 5, what room are we looking at there in
6 that photo?

7 A. It would be this room right here.

8 Q. You worked a 24-hour shift. Did you go back to
9 the station to be relieved?

10 A. The oncoming crew relieved us on scene.

11 Q. That's -- is that common in the fire services
12 if you're on a -- a working call that you do the relief
13 in the field?

14 A. Yes, you can. It's not unheard of.

15 Q. Sun's come up at this point. Is this the same
16 structure on State's 11 that we've been talking about?

17 A. Yes, sir.

18 Q. Do you see the -- on State's 5, what would have
19 been the AB corner when you made the attack in this --
20 this scene?

21 A. Yes, sir.

22 Q. And in State's 12, are we back to where that --
23 that pink room was there on the map on State's 5?

24 A. Yes, sir, that would be right here.

25 Q. And do you see the weatherhead for the power

39

1 supply to the house on State's Exhibit 12?

2 A. It's right here.

3 Q. How does -- does the fire department, through
4 dispatch or the fire alarm center, do you have a phone
5 number to call Encore in the middle of the night to come
6 out and --

7 A. Yes, we do.

8 Q. If a house has natural gas provided by a local
9 utility, are they contacted as well to cut the -- the
10 gas off?

11 A. Yes, they are.

12 Q. And, to your knowledge, did those individuals
13 make the scene that night to -- to turn the utilities
14 off for you?

15 A. They did.

16 Q. State's 13, when you're walking around to the
17 back of the structure, do you see the -- the -- the
18 start of the C side in this photo, State's 13? You see
19 the backyard?

20 A. Yes.

21 Q. Was there children's equipment or playgrounds
22 or stuff like that in the back?

23 A. There was.

24 Q. Did you find a dog in the backyard?

25 A. There was a dog in a pen or a kennel.

1 Q. Did you find any vehicles at the residence when
2 you were out there that night?

3 A. No, sir.

4 Q. State's Exhibit 14, do you see more of the C
5 side now on this photo?

6 A. Yes.

7 Q. Do you see the door that you saw open when you
8 walked around in your initial size-up?

9 A. I do.

10 Q. And can you use the laser pointer to show the
11 jury that, sir?

12 A. Be right here.

13 Q. During your initial walk-around, was there a
14 canopy on this popup tent, or was it as it was? Do you
15 remember?

16 A. I don't recall.

17 MR. BRISSETTE: May I approach the witness,
18 Your Honor?

19 THE COURT: You may.

20 Q. (BY MR. BRISSETTE) Lieutenant, I think I can
21 do it from here on State's 4.

22 Does the property, in looking at it in
23 State's 17, does it extend back a good distance back
24 behind the house?

25 A. Yes, sir.

41

1 Q. In fact, I'm going to show you what's been
2 marked for identification purposes as State's Exhibit
3 230, 231, and 232. You've had a chance to look at those
4 as well in preparation for your testimony, correct?

5 A. Yes, sir.

6 Q. And are those depictions of the structure there
7 at 600 Little School Road in 230, 231 and then the --
8 the property in 232?

9 A. Yes.

10 MR. BRISSETTE: Your Honor, we would tender
11 to Defense State's 230, 231 and 232.

12 THE COURT: And, State, you're offering
13 those exhibits?

14 MR. BRISSETTE: For all purposes, yes, Your
15 Honor.

16 THE COURT: All right.

17 MR. CUMMINGS: I have no objection to
18 State's Exhibit 230.

19 MR. MOORE: Can we approach in regard to
20 231 and 232, Your Honor?

21 THE COURT: Yes, at the corner, please.

22 (BENCH CONFERENCE PROCEEDINGS)

23 MR. MOORE: Judge, I object to 231 because
24 it's got -- right here with Channel 8 News. I think
25 this was a -- captured from -- from the news. It can be

1 obliterated or -- I object to the photograph with that.

2 And I object to 232 on the basis of
3 relevance. It's just -- this is the area of the house
4 after the house has been razed, and it's no longer
5 there, the house, which is not relevant because it's not
6 the way it appeared at the time.

7 THE COURT: Okay. Let me address 232
8 first. What's the purpose of 232, State?

9 MR. BRISSETTE: To show the property
10 layout.

11 THE REPORTER: I'm sorry, Mr. Brissette. I
12 need you to speak into the microphone.

13 MR. BRISSETTE: To show the property
14 layout.

15 THE COURT: Okay. Your objection is
16 sustained. 232 is excluded.

17 MR. BRISSETTE: We offer it for the record
18 only at this point, Your Honor.

19 THE COURT: That's fine. 232 is only for
20 the record only.

21 (State's Exhibit No. 232 admitted)

22 THE COURT: With regard to 231, I'm going
23 to sustain the objection. Go ahead and obliterate it.
24 You can put a piece of tape over it or something.

25 Do you have an objection to that?

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1 MR. MOORE: No, that's fine.

2 THE COURT: All right.

3 MR. BRISSETTE: Okay.

4 THE COURT: All right.

5 MR. BRISSETTE: We need to take a break.

6 THE COURT: That's fine.

7 (OPEN COURT PROCEEDINGS)

8 THE COURT: Ladies and gentlemen, I need to
9 take a break. Would you please step out to the jury
10 room? Thank you very much.

11 (Jury not present)

12 THE COURT: Please be seated.

13 (Recess from 9:44 a.m. to 9:59 a.m.)

14 (Open court, Defendant present, no jury)

15 THE COURT: The State's informed me that
16 they made the modification.

17 MR. BRISSETTE: Judge, it has been
18 modified --

19 THE REPORTER: I'm sorry?

20 THE COURT: Just a second. All I'm doing
21 is talking off the record.

22 All right. Thank you.

23 (Off the record)

24 THE COURT: With regard to 231 -- we're on
25 the record.

1 With regard to 231, my understanding is
2 that there have been modifications completed by the
3 State. Has the Defense had an opportunity to review the
modified exhibit?

MR. CUMMINGS: Yes, sir.

THE COURT: As modified, do you have any
objections?

MR. CUMMINGS: No, Your Honor. He's
removed the objectionable portion.

THE COURT: All right. Exhibit 230, 231
will be admitted, and 232 is excluded, or the
Defendant's objection is sustained.

Both sides for --

MR. BRISSETTE: No, we're not ready for the
jury. We had offered 232 for the record only.

THE COURT: And that was already admitted
for the record only. Thank you.

MR. BRISSETTE: Okay.

(State's Exhibit Nos. 230, 231 admitted)

THE COURT: Are both parties ready to
proceed?

MR. BRISSETTE: Yes.

THE COURT: All right. Bring in the jury.

(Jury present)

THE COURT: Please be seated.

45

Members of the jury, State's Exhibits 230
and 231 are admitted. Defendant's objection to 232 is
sustained.

You may proceed.

Q. (BY MR. BRISSETTE) Lieutenant, how far back
does the property go? Does it go back some distance
back behind the Charlie side of the house?

A. Yes.

Q. Was there any fence or anything like that that
would obstruct the view? It -- it continues on for some
distance back to some other wooded area and other
houses; is that correct?

A. Correct.

Q. While I'm asking about this -- this -- this
white building we've been talking about that's depicted
here in State's Exhibit 19, is that a habitation, in
your opinion?

A. The structure itself?

Q. Yeah.

A. Yes, sir.

Q. Was it adapted for overnight sleeping
accommodations?

A. Yes.

Q. Is Kennedale an incorporated city?

A. It is.

Q. And is 600 Little School Road in Kennedale,
Tarrant County, Texas?

A. Yes, sir.

Q. As we're looking at State's Exhibit 20. Is
this just a continuation of a walk-around in reverse of
how you did your initial size-up?

A. Yes, sir.

Q. 21, what are we looking at here, sir?

A. That was the kennel that the single dog was in.

Q. Do you know what happened to the dog that
night?

A. I believe Captain Hull from the police
department took the dog, and I'm not sure what he did
with it from that point.

Q. Where is animal control at the Kennedale --
city of Kennedale?

A. The animal control officer works out of the
police department.

Q. Is that where the animal control vehicle is
usually kept as well?

A. Yes, sir.

Q. Did you make any observations along the ground
back in here at all when you were out there that night
in State's 22? Did you see anything unusual?

A. Not during my walk-around or -- I was basically

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looking for trip hazards at that point.

Q. Gas meter, is that here on the -- the AB corner
here on the side of the B side here next to the trash
cans?

A. Yes, sir.

MR. BRISSETTE: Judge, may we take the
center lights down?

THE COURT: Yes.

Q. (BY MR. BRISSETTE) Now can you see the gas
meter? Can you point to it with your laser, sir?

A. Right here.

Q. Does there appear to be -- a gas meter appear
to be in working order? There wasn't fire emitting from
the gas meter or anything when you arrived?

A. There was no fire from the gas meter. I -- but
I do not know if it was in working order. I never
examined it or...

MR. BRISSETTE: May I approach the witness,
Your Honor?

THE COURT: You may.

Deputy Martinez, can we have the lights
back on?

Q. (BY MR. BRISSETTE) Sir, I'm going to show you
what's been marked for identification purposes as
State's Exhibit 157, 158, and 159. Do you recognize

1 these exhibits?

2 A. Yes, sir.

3 Q. And are they images that were taken inside what
is known on State's 5 as the red room?

4 A. That's correct.

5 Q. Are the images of what you saw that night in
6 there?

7 A. Yes.

8 Q. Okay. At some point during -- in your attack,
9 once the fire was knocked down, do you start a primary
10 search of the residence?

11 A. Yes, the primary search was started.

12 Q. What is a -- what is a primary search?

13 A. A primary search is a -- is a quick search of
14 each room looking for possible victims. Usually, it's
15 a -- a real quick search, any open floor space, and then
16 a quick sweep under furniture and closets, stuff like
17 that. But it's -- it's meant to be done quickly, and
18 then -- and then the norm is for a secondary search to
19 be done at a later time.

20 Q. Were you part of the primary search in this
21 case?

22 A. Forest Hill Quint 23 was initially given the
23 task of the primary search.

24 Q. At some point in time, did you meet up with
25

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1 the -- the company of Quint 23 inside the residence?

2 A. Yes.

3 Q. And where did you meet up with them at?

4 A. It would have been in the kitchen area.

5 Q. Without going into the conversation you had
6 with them, did you instruct them to do any additional
7 searches?

8 A. Yes.

9 Q. And do you know where they went and did their
10 additional search in?

11 A. They proceeded back towards the AB -- the room
12 at the AB corner, and that's -- that was where they were
13 going to exhibit.

14 Q. At some point did the lieutenant from Forest
15 Hill come back and meet you again in the center part of
16 the house?

17 A. Okay. It would have been right there at the --
18 it would have been right -- this area right -- right in
19 this area here that we met up again.

20 Q. Without going into that conversation, did you
21 do something next? Did you go somewhere?

22 A. Yes. I proceeded into the -- the light tan or
23 light brown room there at the AB corner.

24 Q. And were you able to make any observations in
25 there?

1 A. We discovered somebody laying -- found a body
2 in -- in the bed in that room.

3 Q. Did you notify command at that point? Was the
4 fire chief there yet?

5 A. The fire chief was on scene at that time.

6 Q. So you had handed over command to your fire
7 chief?

8 A. That's right.

9 Q. Did you conduct a secondary search?

10 A. Secondary search -- I don't know what the time
11 frame was, but a secondary search was -- was done after
12 that, yes.

13 Q. And, in fact, a third search was done as well,
14 correct?

15 A. That is correct.

16 Q. During a secondary search, did you have an
17 occasion to make any observations in what's depicted on
18 State's 5 as the red room, the AD corner room?

19 MR. MOORE: Judge, I would object to any
20 testimony about any subsequent searches after the
21 initial search on the same basis that we raised in our
22 Pretrial Motions to Suppress.

23 THE COURT: All right. Your objection is
24 overruled.

25 MR. MOORE: May I have a continuing

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1 objection to any testimony regarding any further
2 searches after the initial search?

3 THE COURT: You do -- you will.

4 MR. MOORE: Thank you.

5 THE COURT: That's granted.
6 You may proceed.

7 Q. (BY MR. BRISSETTE) Lieutenant Cleveland, did
8 you make any observations in the AD corner, the room
9 that's depicted in red here on State's 5?

10 A. Yes.

11 Q. What did you discover?

12 A. From the outside looking in, this -- this
13 window right here, I was -- I did see another body
14 laying in the floor.

15 Q. And is that body depicted in what we went over
16 at the stand a couple of minutes ago as State's 157, 158
17 and 159?

18 A. Yes, sir.

19 Q. Is it how you saw the individual in that room
20 at the time when you looked through the window?

21 A. Yes, sir.

22 Q. Did you have elements of a search teams (sic)
23 inside the habitation at that point go in and confirm
24 what you were seeing from the outside?

25 A. I believe the crew for Mansfield had already

1 confirmed that she was in there. I automatically
2 reported it to command.

3 Q. Okay.

4 MR. BRISSETTE: We tender to Defense at
5 this time, Your Honor, 157, 158 and 159, and offer them
6 for all purposes.

7 MR. MOORE: May we approach, Judge?

8 THE COURT: You may.

9 (BENCH CONFERENCE PROCEEDINGS)

10 MR. MOORE: Judge, I've got two objections
11 to the exhibits. One is the exhibit is actually a
12 composite exhibit, contains the photograph, but it also
13 contains the diagram. And we object to the form of
14 the -- just on the basis that it is a composite.

15 I also object on the basis that the
16 photographs are the result -- on the same basis that we
17 raised in the Pretrial Motion to Suppress. They were
18 made as part of subsequent searches that we feel like
19 were not legally done.

20 My final objection is that the exhibits are
21 duplicative. They show the same scene, and -- and -- so
22 I don't see a manifest need for three photographs of
23 essentially the same thing.

24 My final objection is that on each -- in
25 regard to each of them, a balancing objection that

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1 they're more prejudicial than probative on any issue
2 before the Court.

3 THE COURT: All right. Let me ask a couple
4 of questions of the State.

5 MR. BRISSETTE: Yes, Your Honor.

6 THE COURT: With regard to the composite
7 aspects of this, the lower left-hand corner depicts a
8 diagram. Is that the same diagram that's been
9 previously admitted?

10 MR. BRISSETTE: Yes. It's State's 5, Your
11 Honor.

12 THE COURT: Okay. And you've indicated
13 this red area. Is that the location of what this
14 photograph is depicting --

15 MR. BRISSETTE: Yes, Your Honor.

16 THE COURT: Now, the diagram has already
17 been previously admitted; is that correct?

18 MR. BRISSETTE: Yes, Your Honor.

19 THE COURT: All right. Your objection with
20 regard to the composite aspect is overruled.

21 Now, with --

22 MS. FERNANDEZ: This, as is, was not
23 admitted. It was --

24 THE REPORTER: I'm sorry, Ms. Fernandez.
25 Speak into the microphone.

1 THE COURT: Okay. Now, first off, Counsel,
2 there's only going to be one lawyer making one objection
3 at a time. All right? Did you want to add anything to
4 that objection?

5 MR. MOORE: Well, the -- the diagram that
6 was admitted is -- is not the same diagram as what's on
7 the exhibit.

8 THE COURT: Okay.

9 MR. MOORE: And so there's a distinction
10 between the two diagrams. One's got all the colors;
11 one -- one exhibit doesn't. And I understand the
12 purpose. I just object to the form.

13 THE COURT: All right. Now, with regard to
14 the exhibit that is being depicted in State's Exhibit 5,
15 it is color-coded, and it reflects the same location
16 that was being -- the photograph being taken from; is
17 that correct?

18 MR. BRISSETTE: Yes, Your Honor.

19 THE COURT: Okay. And that color and that
20 location coordinate with the diagram that's contained on
21 State's Exhibit 157. Your objection is still overruled.

22 Now, with regard to the -- the 403
23 balancing test, I do have a couple of questions, is
24 that -- well, I'm going to withdraw that -- strike that.

25 I have reviewed the photographs and the

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1 Court has conducted the balancing test. The -- the
2 evidentiary value outweighs the prejudicial effect
3 respectively in each of the exhibits contained in 157,
4 158 and 159. It is relevant and should be considered by
5 the jury.

6 MR. BRISSETTE: All right. Judge, while
7 we're here --

8 THE COURT: Just one moment.

9 Are there any rulings that you require?

10 MR. MOORE: Yeah. And I don't know if
11 the -- if the State intends to project these on the
12 screen.

13 MR. BRISSETTE: No --

14 MR. MOORE: Okay.

15 MR. BRISSETTE: -- we do not. Anytime you
16 see on the presentation hard copy, it's for that.

17 MR. MOORE: Okay.

18 MR. BRISSETTE: Judge, if I may? The State
19 would tender at this point 233 (sic) for the record
20 only. It's a compilation of all the photos taken at the
21 crime scene that day by the agents of the State, whether
22 they be the Fire Marshal's Office, our office, the
23 Sheriff's Department, ATF and the Medical Examiner. I
24 know the Defense has raised their objection to 403, 404
25 on the balancing.

1 THE COURT: But for the record only, do you
2 have any objections?

3 MR. MOORE: No.

4 MR. BRISSETTE: No.

5 THE COURT: Okay. So 233 (sic), for the
6 record only, is admitted.

7 All right. Anything else, Mr. Moore?

8 MR. MOORE: No, Judge. That's all.

9 THE COURT: Thank you very much.

10 (OPEN COURT PROCEEDINGS)

11 THE COURT: State, you may proceed.

12 Now, with regard to the exhibits, you have
13 to restate the number of the exhibits again, State.

14 MR. BRISSETTE: Sure, Your Honor.

15 THE COURT: 157, 158 and 159, I believe; is
16 that correct?

17 MR. BRISSETTE: Sounds right.

18 Yes, Your Honor.

19 THE COURT: State's Exhibit 157, 158 and
20 159 are admitted.

21 (State's Exhibit Nos. 157-159 admitted).

22 MR. BRISSETTE: May I approach the witness,
23 Your Honor?

24 THE COURT: You may.

25 Q. (BY MR. BRISSETTE) Lieutenant, I'm going to

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1 show you 157. In State's 157 do you see a smaller
2 picture of State's Exhibit 5 that's on the screen right
3 now?

4 A. Yes.

5 Q. Do you see that just one room is colored at
6 this point?

7 A. That's correct.

8 Q. Does it -- the photo that's depicted in 157
9 have the corresponding trim that's colored?

10 A. Yes.

11 Q. You've had a chance to look at a number of
12 exhibits here in your trial prep. When you look at fire
13 rooms, fire debris, does it all start running together
14 for you from time to time of what room's what after the
15 fact?

16 A. It can, yes.

17 Q. The exhibits that you have there, 157 and 158,
18 the -- the red room there, is the ring in the color
19 corresponding to show you where you're at in the
20 structure as you looked through the exhibits in
preparation for your testimony today?

22 A. Yes, sir.

23 Q. And does it change from room to room, the color
24 scheme?

25 A. The color scheme, yes.

1 Q. And they correspond with what's on State's

2 Exhibit 5; is that correct?

3 A. That's correct.

4 Q. Once you were relieved on scene, what did you
5 do? Did you go back to quarters and go home for the
6 day? Did you have to -- to write any reports that day,
7 or did you write them on subsequent days?

8 A. I started the -- the report. I don't remember
9 if I actually completed the report that day, but then --
10 and then went home.

11 Q. Is there a state mandated form that you have to
12 complete for every fire call you make, every scene you
13 make like this?

14 A. Yes, sir.

15 Q. Is that what you started that day?

16 A. That's correct.

17 Q. And would other companies that come behind you,
18 other shifts, add on to that or complete that as they go
19 throughout their work at the scene?

20 A. Yes, they can.

21 Q. Do you have an understanding as to how long
22 Kennedale had a fire truck out there that day?

23 A. I do not know until what time.

24 Q. But you didn't take the quint back to the
25 station with you when you left, did you?

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1 A. No, we did not.

2 MR. BRISSETTE: Pass the witness.

3 THE COURT: Cross-examination?

4 CROSS-EXAMINATION

5 BY MR. MOORE:

6 Q. Lieutenant Cleveland, you went to the fire
7 academy back in 1998, '99; is that correct?

8 A. Yes, sir.

9 Q. You'd been a volunteer firefighter before that.
10 Where were you a volunteer?

11 A. In the City of Roanoke.

12 Q. What kind of full-time job were you doing at
13 that point?

14 A. Actually, I was working for the City part of
15 the time as a paramedic. They paid EMS and the
16 volunteer fire.

17 Q. Okay. What -- what was your formal educational
18 background before you went to the fire academy? How far
19 did you go in school?

20 A. High school.

21 Q. Okay. And so from there, you went to work for
22 the City of Roanoke, or they had other jobs before you
23 took --

24 A. I had other jobs prior to that.

25 Q. All right. And you said that you've had

1 continuing education since you've been a -- a -- a

2 licensed firefighter; is that correct?

3 A. That's correct.

4 Q. Okay. Now, Kennedale, back -- back at that
5 time, it had -- it had an engine and it had a quint; is
6 that correct?

7 A. At the time of the fire?

8 Q. Yes.

9 A. Yes, sir.

10 Q. Okay. Did -- were both of them in service at
11 the same time, or did only one of them -- only one of
12 them in service?

13 A. The quint was staffed. They have some in
14 general reserve status.

15 Q. Okay. And so that's the reason the quint made
16 the scene that night?

17 A. That's correct.

18 Q. When you -- when you got to the scene, you
19 indicated that the -- you were able to see fire emitting
20 from one end of the building or -- or two ends of the
21 building?

22 A. I could see fire from the two ends of the
23 building. There was the initial observation of fire
24 from the CD corner and then...

25 Q. It was basically from the -- from the D end and

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1 the B end or --

2 A. That's correct. Initially, coming up to the
3 scene, we saw -- we saw fire venting from here and then
4 from this door right here.

5 Q. Okay. And -- and you -- at -- when you got to
6 the scene, you learned from Officer Worthy that he had
7 forced that door; is that correct?

8 A. That's correct.

9 Q. Now, when you did your initial walk-around, you
10 said that you had -- had found the back door, that door
11 right over there?

12 A. Correct.

13 Q. And -- and it was opened at the time you got --

14 A. Yes, sir.

15 Q. And what was it that you said you could
16 actually see all the way through, from the back door to
17 the front?

18 A. That's correct.

19 Q. So you had a view from here all the way down
20 somewhere -- were you able to see out the window or were
21 you --

22 A. I was -- I was looking at this window right
23 here.

24 Q. And you could see the -- the lights of the
25 truck through the window?

1 A. Correct.

2 Q. Okay.

3 A. It wasn't directly the truck, but it was lights
4 flashing across the glass there.

5 Q. All right. Was there -- was there any fire
6 actively burning in this area whenever you were looking
7 through that door?

8 A. No, sir.

9 Q. When you looked through this door, I think you
10 said that this room was totally engulfed in flames.

11 A. Yes, sir.

12 Q. Okay. That was not the situation that Officer
13 Worthy told you he saw the room in when he kicked the
14 door; is that correct?

15 A. That's correct. He said that when -- when he
16 kicked that door in, there was heavy smoke in the room
17 and a little bit of fire near the bed, I believe.

18 Q. And do you know where in that room the bed was
19 located?

20 A. The bed was right here.

21 Q. Okay. So he was able to see that there was
22 fire at the head of the bed, heavy smoke, but the room
23 was not totally engulfed whenever -- like it was
24 whenever you looked at it?

25 A. That's correct.

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1 Q. What happens when you open the door to a room
2 that's on fire? What happens to the fire?

3 A. It can intensify.

4 Q. Gives oxygen to the fire --

5 A. That's correct.

6 Q. -- get it to flare up.

7 There, in the photograph that was
8 introduced regarding this area, that window right there,
9 there is some siding that looks like it's peeled back.
10 Was that done by the fire department in their knock-down
11 efforts, or do you even know?

12 A. I do not know.

13 Q. How many -- y'all were the first fire unit to
14 make the scene; is that correct?

15 A. Yes, sir.

16 Q. How -- how long was it before other
17 firefighters, other than Kennedale firefighters, made
18 the scene out there?

19 A. Forest Hill and Mansfield arrived on scene
20 pretty close together. I -- I don't know how many
21 minutes that was, so...

22 MR. MOORE: Do you have the photos of the
23 outside of the house on there?

24 MR. BRISSETTE: Uh-huh.

25 MR. MOORE: Can I --

1 Q. (BY MR. MOORE) Okay. That's the front of the
2 house. Do you have any idea what time of the day this
3 photograph was taken?

4 A. No, sir.

5 Q. Okay. Do you even know if it was taken that
6 next morning or -- or days later or --

7 A. I do not.

8 Q. How long was the Kennedale Fire Department
9 involved -- from the time that you arrived, how long did
10 it take the Kennedale Fire Department and the other
11 units that responded to get the fire under control?

12 A. I'm not real sure on the time.

13 Q. Was it an hour, less than an hour?

14 A. I would say within the hour, if I was to guess.
15 As far as knocking down all visible fire at that point,
16 yeah, it would have been within the hour.

17 Q. Okay. You -- when -- when you talked about
18 this initial entry into the -- into the house that y'all
19 did, was the fire under control at that -- at the point
20 you did that entry when you did that initial
21 walk-through that you talked about?

22 A. Are you talking about our initial attack or --

23 Q. No, not -- not the entry into the house to
24 fight the fire, but at some point you said you went
25 through the house, did kind of -- I can't remember what

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1 you called it -- a primary search?

2 A. Oh, the primary search?

3 Q. Yeah.

4 A. Primary search was done after the bulk of the
5 fire had been knocked down. There was still heavy smoke
6 coming from the house.

7 Q. Okay. But the -- the flames would have been
8 suppressed at that point; is that right?

9 A. Yes, sir.

10 Q. All right. Now, there was -- you left the --
11 the house the next morning at 7:00 o'clock in the
12 morning; is that right?

13 A. I think it was actually closer to 7:45.

14 Q. Okay. So y'all had been there for seven hours?

15 A. Yes, sir.

16 Q. How much of that time was spent in actual fire
17 suppression efforts?

18 A. The first hour.

19 Q. Okay. What did y'all do for the next six
20 hours?

21 A. Assisted the investigators.

22 Q. Okay. Now, by investigators, who are you
23 talking about?

24 A. The gentleman from the Tarrant County Fire
25 Marshal's Office and then our police department.

1 Q. All right. Were you called on during that time
2 to -- to make entry into the house anymore after the
3 fire was initially suppressed to put out any -- any
4 smoldering embers --

5 A. There was -- there was some smoldering clothing
6 and, you know, small spots that needed to be overhauled
7 during that time, just make it easier on -- on the folks
8 that were operating in there just to get some of that
9 smoke out.

10 Q. And how would y'all do that?

11 A. Take a small line and -- and wet stuff or just
12 actually, you know, dig it out while being supervised by
13 the investigators, and then remove that stuff to the
14 outside.

15 Q. Would they direct you to do that, or was that
16 something that y'all would do on your own initiative --

17 A. They were directing us at that point. We
18 weren't -- we weren't doing anything without actually
19 being told to do and...

20 Q. Okay. Had the investigator not been present on
21 the scene, would the quint have returned to the fire
22 station?

23 A. No, they wouldn't. We -- we would have left --
24 we wouldn't have left scene until somebody else had
25 arrived and -- to keep the chain of custody of the

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1 building.

2 Q. Okay. What is that there -- there in that
3 photograph right there? There's a sign right there.

4 Can you tell what that said?

5 A. I don't remember what it says. It's one of the
6 church's.

7 Q. Okay. Shady Oaks Baptist Church. Is that what
8 it said?

9 A. I think that's what it says.

10 Q. All right. This is the -- the backside of the
11 house that we were talking about, is that -- is that --
12 is that back door right there?

13 A. Yes, sir.

14 Q. Okay. And that's the one that you found open?

15 A. Yes.

16 Q. All right. Did you have any discussions with
17 Officer Worthy about whether or not that door was open
18 at the time that he arrived?

19 A. When -- when I dismounted the truck, Officer
20 Worthy was parked in the street on Little School Road.
21 He came to me and told me that -- that that back door
22 was open.

23 Q. Okay. So the back door was open. This -- you
24 can see right there in that photograph, it looks like
25 some of the siding is pulled back. You don't have any

1 idea how --

2 A. I don't know if that was from the fire or from
3 the suppression activities.

4 Q. Okay. When you -- when you left the scene that
5 day, the -- the -- y'all left, and the other crew came
6 on and took custody of the equipment and stayed there
7 until the investigator --

8 A. Yes, sir.

9 Q. -- told him to leave, basically; is that right?

10 A. Yes, sir.

11 MR. MOORE: Thank you very much.

12 Pass the witness, Judge.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION

15 BY MR. BRISSETTE:

16 Q. Lieutenant Cleveland, what's a pro-pack?

17 A. A pro-pack is a piece of firefighting equipment
18 that carries Class A foam in it, and we can hook up a
19 regular hand line to it and -- and get -- get a foam
20 water solution out of the end of it to help them put
21 down stubborn fires, you know, like smoldering debris.

22 Q. For a fire that has flashed over in some
23 compartments inside a residence, can heat energy stay in
24 the walls and the common household materials for a
25 period of time?

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1 A. Yes, sir.

2 Q. And can you get reignition of the fuel packages
3 in those rooms for a significant amount of time after
4 that?

5 A. Yes, you can.

6 Q. Would it surprise you, based on your years of
7 service in the fire service, that a pro-pack was having
8 to be used into the late afternoon hours to put out
9 smoldering fires inside the residence at 600 Little
10 School Road?

11 A. No, it wouldn't surprise me.

12 Q. Thank you.

13 MR. BRISSETTE: Pass the witness.

14 THE COURT: Any further questions, Mr.
15 Moore?

16 MR. MOORE: Oh, not at this time, Judge.
17 And I have no objection to him being excused to go back
18 to work. We request that he remain subject to the Rule.

19 THE COURT: You're subject to the Rule.
20 Previously there were a number of witnesses sworn in.
21 You may not discuss your testimony with anybody else,
22 including those that may be prospective witnesses until
23 you're released from the Rule. You may talk with the
24 respective parties and attorneys, should any of them
25 need to talk to you. Do you understand?

1 THE WITNESS: Yes, sir.

2 THE COURT: All right, Lieutenant. You may
3 step down. You're excused.

4 (Witness retires)

5 THE COURT: State, call your next witness.

6 MR. BRISSETTE: Captain Mark Wilson.

7 THE COURT: Captain Wilson, please.

8 (Witness enters courtroom)

9 THE COURT: Please raise your right hand.

10 (Witness sworn)

11 THE COURT: Please be seated, sir.

12 You may proceed when you're ready, State.

13 MR. BRISSETTE: Thank you, Judge.

14 MARK WILSON,

15 having been first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. BRISSETTE:

18 Q. Sir, could you introduce yourself to the jury?

19 A. Yes, sir. Captain Mark Wilson with Mansfield
20 Fire Department.

21 Q. Captain Wilson, how long have you been with
22 Mansfield?

23 A. 17 years.

24 Q. How long have you been a professional
25 firefighter?

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1 A. Be 19 years in November.

2 Q. Where were you for the other two?

3 A. City of Haltom City.

4 Q. With the rank of captain, what duties do you
5 have in Mansfield?

6 A. At this time -- at that time I was -- I'm on
7 operations. We work 24 hours on, 48 hours off shift,
8 and I'm actually on an apparatus on a quint.

9 Q. And where is your station located in the city
10 of Mansfield?

11 A. On East Broad. 3100 East Broad.

12 Q. That particular fire station in Mansfield, for
13 the folks that may not know, is that the closest one to
14 the city of Kennedale?

15 A. No, sir.

16 Q. How does mutual aid then decide when a city
17 such as Kennedale calls Mansfield's alarm center and
18 asks for a piece of equipment for Mansfield? Who
19 decides what goes?

20 A. Mutual aid is -- is a prior agreement, and it's
21 under contract. It is mutual aid and/or automatic aid
22 so that when they established this contract, they --
23 when the other agency calls into our dispatch, it's
24 automatically goes into the CAD system, and it
25 automatically pulls up that area, that street, and

1 dispatches the closest apparatus that's available that's
2 in the station.

3 Q. And that was you that night, December 17th,
2009, into the early morning hours of December 18, 2009?

4 A. I was working overtime at Station 4.

5 Q. And did you have an occasion to be -- to be
6 dispatched over to Kennedale for a structure fire?

7 A. From Station 3 or --

8 Q. From where you were working that night.

9 A. Oh, yes, yes. We were right on -- on the
10 border.

11 Q. And how long do you think it took you to get
12 there?

13 A. Probably ten minutes.

14 Q. When you got there, Captain, as part of your
15 duties, even though it's not your fire and your work, do
16 you still do your initial size-up like you would for
17 anything else?

18 A. Absolutely.

19 Q. And what was your initial size-up of this
20 structure?

21 A. That this structure was free burning and had
22 been burning for awhile. It already ventilated. They
23 already had initial attack, and it was -- it was -- it
24 was going pretty good.

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1 Q. What does "free burning" mean?

2 A. Incipient stage, where everything is pretty
3 much burning at such a high temperature inside that
4 it -- it is -- everything's pretty much burning that can
5 burn.

6 Q. If we're to look at a compartment, say a
7 bedroom, typical bedroom --

8 A. Yes, sir.

9 Q. -- how does -- if a fire starts down low --

10 A. Uh-huh.

11 Q. -- take us through the stages of a fire, how it
12 progresses that you see, based on your training and
13 experience. Does it just stay at the floor and spread,
14 or does there -- is there atmospheric conditions that
15 take place in a room with gases or things like that?

16 A. Definitely atmospheric conditions that -- that
17 will induce it. Also, you have to have some type of
18 objects, whether it be curtains, items on the wall, so
19 forth, if there's a lot of debris on the floor for the
20 fuel to -- to -- to make it rise and make it lift. And
21 once it starts doing that and the temperature rises, it
22 starts burning rapidly.

23 Q. Would those items that you described that are
24 commonly found in a house, would those be called fuel
25 packages --

1 A. Yes, sir.

2 Q. -- in the fire service?

3 A. Yes, sir. Yes, sir, ordinary.

4 Q. What's -- do you know about that -- a phrase,
5 the "fire tetrahedron"?

6 A. Yes, sir.

7 Q. Can you explain that to the jury?

8 A. It's chemistry. It shows that you have to have
9 the -- the three stages of the oxygen, the fuel and
10 within this particular part, it -- it had definitely had
11 oxygen, it had vented and so forth, so it was -- it was
12 breathing, definitely had plenty of fuel with -- with
13 everything that was in the house, with furniture and all
14 the debris that was in the living room, the bedrooms and
15 so forth.

16 Q. And do you have energy then as well as part of
17 that tetrahedron?

18 A. Yes, absolutely.

19 Q. If you have a -- is there a chain reaction that
20 takes place once a fire gets past its incipient stage
21 and moves forward in a free burning?

22 A. Yes, sir.

23 Q. And what is the chain reaction?

24 A. When -- it's an actual -- talking about the
25 fuel that's -- that's continuing burning before it burns

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1 itself out. I mean, you can -- you can alleviate the
2 fire by taking -- alleviate the oxygen, which it wasn't
3 there because it was vented.

4 And when I say "vented," it already burned
5 through the roof and outside the gable and/or the
6 windows, so it was -- it was breathing. There was
7 plenty of fuel. The only way it was going to be
8 extinguished was actually applying the water.

9 Q. And that would take the heat away?

10 A. And that would take the heat away, yes, sir.

11 Q. Now, on the tetrahedron, if you can break one
12 of the four, if you look at it, legs of the chair, you
13 can get a handle on the fire; is that correct?

14 A. Correct.

15 Q. As you arrived on scene, did you go to command,
16 I guess, if there was one? It was a working command at
17 that point, I believe, was it not?

18 A. It is combative command, and there was another
19 agency there. Kennedale was already there, and they had
20 that under control. If we were the first apparatus on,
21 yes, the first apparatus would take command.

22 Q. And was Lieutenant Cleveland a combative
23 command at that point?

24 A. He was -- he was combative, but there was --
25 there's somebody -- the chief, Mike McMurray, was there

1 as well making the scene. When we arrived, I did a
2 face-to-face with Lieutenant Cleveland, picked up two
3 radios that we could be compatible for communication and
4 gave us our assignment, and we went forward with that.

5 Q. State's Exhibit No. 5, what assignment did
6 Lieutenant Cleveland give you? Based on your orders,
7 where did you go on State's 5?

8 A. We went in this front door right here on side
9 A.

10 Q. Did you go in with a hose line?

11 A. Yes, sir, preconnect. That was off Kennedale's
12 quint, inch and three-quarter.

13 Q. How many people were on your apparatus that
14 night?

15 A. Three.

16 Q. Did your entire team go in together as a -- as
17 a unit?

18 A. Yes, sir.

19 Q. What were the atmospheric conditions like at
20 that time when you went in the front door there on the A
21 side by the yellow and light-blue room there?

22 A. Probably couldn't see 12 to 16 inches in front
23 of you from the dense smoke and extremely hot.

24 Q. Do you go in standing up when you walk into a
25 situation like that?

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1 A. You cannot.

2 Q. Why?

3 A. Because of the extreme heat and thermal balance
4 because you can actually feel the heat at a certain
5 level when it burns -- free burns for awhile, and it's
6 going -- it's going to burn; and if it doesn't burn
7 clean, you still have dense smoke and -- which -- which
8 will have a lot of carbon. It's just thick, black,
9 dark. You cannot see.

10 Q. Is there a fire term known as black fire as
11 well?

12 A. Yes, sir.

13 Q. And is that the smoke that you were seeing in
14 that room?

15 A. Absolutely.

16 Q. Does that smoke have the uncharged or
17 unconsumed black carbon particles in it that --

18 A. Yes. The hydrocarbons weren't -- weren't -- it
19 wasn't actually hot enough for how much fuel, and it
20 wasn't burning clean. And that's why when -- when we
21 ventilate, that's what we try to do when we actually cut
22 a roof, try to get to the highest point to try to let
23 that -- that superheated gas escape from the structure.

24 Q. Is that the superheated gas that would cause a
25 room to flashover at a point?

1 A. It could if it gets hot enough for the ignition
2 temperature, yes.

3 Q. What does flashover mean?

4 A. Flashover means when it -- when it actually
5 gets to the certain temperature and it does ignite and
6 everything in the room ignites on fire.

7 Q. You had occasion, I believe, last week to look
8 at some in-car video from the Kennedale Police
9 Department, did you not?

10 A. Yes, sir.

11 Q. With respect to State's 5 in the orange room on
12 the B -- AB side, were you able to watch any video and
13 form any opinions about the fire conditions you saw at
14 the beginning of Patrol Car 47's video?

15 A. That there was more than likely two ports of --
16 points of origin with this particular fire because
17 this -- this side -- B side was heavy, dark, dense smoke
18 and also on the -- the CD corner as well.

19 Q. With respect to that video, were you able to
20 see fire emitting? In the photo I know it's at a
21 distance, but from the top to bottom of that doorway in
22 some of the videos when you were --

23 A. Yes, sir.

24 Q. Would that be consistent with a room that's
25 reached the flashover condition?

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1 A. Could be, yes.

2 Q. If you were to be told by the first person that
3 opened that door that it was heavy, black smoke and it
4 wasn't on -- it wasn't fire floor to ceiling at that
5 part and somebody ventilated by opening the door, would
6 that be the -- the next round of fresh oxygen in?

7 A. It very well could be.

8 Q. When you went inside, are you taking a hose to
9 preconnect with you?

10 A. Absolutely.

11 Q. Mask on?

12 A. We were on air, yes.

13 Q. Did you have a thermal imager with you from
14 your quint that night?

15 A. We had a thermal imager. I had one when --
16 when I dismounted the apparatus, thermal imager, a
17 flash -- additional flashlight and a Halligan bar.

18 Q. What's a Halligan bar?

19 A. It is a tool for extrication for prying, and, I
20 mean, you can -- you can pry with it doors. It's a
21 heavy tool. It has a flathead axe. It's got three --
22 three actual assessments where you can actually use it
23 for a task.

24 Q. What y'all use to tear stuff up with, correct?

25 A. Yes, sir.

1 Q. This thermal imager, what's its purpose in --
2 in firefighting during the suppression activities?

3 A. Thermal imager is -- with the -- the third
4 generation that we have with ours is an imager, it's a
5 camera that -- that takes in the heat. It has

6 a signature, it shows a signature of a .5 degrees
7 difference, so if you go into a situation where it gets
8 to a certain temperature, it will just be solid white,
9 and at this -- this particular one, it was solid white.

10 Q. What did you do next?

11 A. When we went into this side A right here --
12 this was the porch, this is where we donned our mask.
13 We went in, tried to get all through -- in the debris
14 and tried to get around. There was a lot of stuff on
15 the ground. It was more difficult to get around and
16 get -- get through and try to get to the seat of the
17 fire. We -- we knew that when we went into that room,
18 that was not the seat of the fire. We were trying to
19 make our way back to the corner where we could try get
20 a -- because when we pulled up when -- on a size-up, we
21 had an idea of where the fire was.

22 Q. The jury's --

23 A. So --

24 Q. The jury's had an opportunity to see some
25 photos with some cones around a utility pole.

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1 A. Yes, sir.

2 Q. Were those cones put out at your request?

3 A. Absolutely.

4 Q. Why?

5 A. It's a hazard. When you have 220 volts -- it
6 may have been -- it may have been 1440 -- 14,400 volts,
7 and that's a hazard, a life-threatening hazard.

8 Q. Did you pull back out of the structure at that
9 point and make another plan of attack?

10 A. Yes, sir. When we -- when -- when we went into
11 the -- the front door, we all -- made it all the way to
12 the back door through the kitchen, it was already
13 opened, saw the fresh air, we saw what was going on, we
14 knew that we were at the back door.

15 We came back through and tried to make our
16 way back over to the D side and went into the hallway,
17 the green -- let's see -- right in here, but we stopped
18 in this area because we -- we couldn't see. There
19 wasn't -- it was a dead end.

20 So we proceeded to come back out. We took
21 our mask off, got some tools, and we -- the double
22 window right there on the AD corner, we pulled those
23 out, completely off, completely out of the frame, the
24 wood frame case windows, pulled them out, and myself and
25 the driver at that time, David Holland, bailed in. We

1 had to jump to get in because -- I don't remember the

2 actual height -- and the other firefighter fed us the
3 hose, and we proceeded to go into the bedroom.

4 Q. This hose, a preconnect, it's what, about an
5 inch and three quarters?

6 A. Inch and three quarter, yes, sir.

7 Q. Is it easy to move around if the hose is
8 charged -- and by that, I mean, it has water in it,
9 pressure on it?

10 A. It -- it's -- it could be difficult, especially
11 when you're going in and around and through obstacles,
12 and doesn't -- this -- this particular picture doesn't
13 justify what actually the debris and stuff that we were
14 having to go over and through and around in the living
15 room area.

16 And then when we got in the bedroom, it
17 was -- as soon as we got -- got in the bedroom, I used a
18 pipe pole to pull some ceiling so we could chase the
19 fire to find out where it actually is because it was so
20 hot, and you could not see the best of conditions that
21 there is -- there's still something going on.

22 Q. What do you mean, "chase the fire," Captain?

23 A. When it's in an attic, that's -- that's what
24 you're doing. You're -- you're chasing it down to find
25 out where it is. The only way you can do that is -- is

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1 to get in and -- and pull ceiling.

2 Q. Do you do that with what's known in the fire
3 service as a trash pole, or a hook?

4 A. Yes, sir. You can use a pipe pole, which is
5 just a single thin object, or you can use a rubbish
6 hook, which has two large hooks where you can actually
7 get in up on top of that Sheetrock, and you can pull
8 large pieces down.

9 That's what -- that's what we did. We end
10 up going in, and we were pulling full formate sheets of
11 fire -- excuse me -- Sheetrock down. And it was coming
12 down in front of us, so that's when we just kept going.
13 We stepped on the bed, went -- proceeded through the --
14 through the bedroom and ended up right here in this
15 closet.

16 Q. Did you know you were in a closet at the time?

17 A. Had a pretty good idea, and we busted a hole
18 through the closet to see what was on the other side.
19 So we got a -- a hole through the closet, got the camera
20 in, did a visual and figured out we needed to make our
21 way back out. And so we went into the hallway again and
22 figured out we couldn't -- couldn't go that way, so we
23 exited the building or exited that bedroom out of the
24 front on the AD corner.

25 Q. When you initially got to the closet, did you

1 realize there was a hallway right next to you at that
2 time?

3 A. Not right then.

4 Q. Could you see the hallway in the atmosphere at
5 that time?

6 A. No, sir.

7 Q. What was the visibility when you got to the
8 closet?

9 A. Zero. I mean, I would say your hand in front
10 of your face. And it wasn't clear at all. I mean, it
11 was little to none.

12 Q. How do you keep up with your partner then when
13 you're in there?

14 A. Communication and actually contact with him.

15 MR. BRISSETTE: May I approach the witness,
16 Your Honor?

17 THE COURT: You may.

18 Q. (BY MR. BRISSETTE) I'm showing you what's been
19 marked for identification purposes as State's Exhibit
20 32, 154 and 155. Do you recognize those exhibits, sir?

21 A. Yes. This is the bedroom that -- that we had
22 to -- to jump into.

23 Q. That's State's 32, yes?

24 A. And that's where we went in, we came across --

25 Q. So --

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1 A. -- and we came across, and then that's where
2 we -- that's the closet.

3 Q. All right. The closet you see is depicted
4 in -- in 155; is that correct?

5 A. Yes, sir.

6 Q. And in 154 is another view of part of the room
7 where the closet starts?

8 A. Yes, sir. And that's when we -- when we -- we
9 were in the closet and figured out, that's when we -- we
10 backed out and proceeded to go back up into the hallway
11 and try to go into that -- that green area that's --
12 that's on -- on the screen right there.

13 MR. BRISSETTE: Your Honor, we tender to
14 Defense State's Exhibit 32, 154 and 155, offer them for
15 all purposes.

16 MR. CUMMINGS: First, Your Honor, my
17 objection is that I don't believe the predicate question
18 was asked or answered to any of State's Exhibits 32, 154
19 or 155.

20 THE COURT: May I see the exhibits?

21 MR. CUMMINGS: I beg your pardon?

22 THE COURT: May I see the exhibits?

23 MR. CUMMINGS: Yes, Your Honor. I need to
24 approach regarding 154 and 155.

25 (BENCH CONFERENCE PROCEEDINGS)

1 THE COURT: Okay. So I'm looking at

2 State's Exhibit 32.

3 MR. CUMMINGS: The only objection I have to
4 that is I -- I believe his witness was -- was never
5 asked if it fairly and accurately depicts the scene. He
6 just started talking about it.

7 THE COURT: All right.

8 MR. CUMMINGS: I mean, that's just a
9 technical thing.

10 Same objections to these two; however, I
11 think you'll find both 154 and 155 appear to be have
12 taken out --

13 THE REPORTER: I'm sorry, Mr. Cummings.
14 Could you speak into the microphone?

15 MR. CUMMINGS: Sure.

16 I believe they depict investigative tools.

17 MR. BRISSETTE: Judge, I'll be happy to ask
18 more questions to clarify for the record to make Mr.
19 Cummings happy. I apologize.

20 THE COURT: All right. Thank you.

21 (OPEN COURT PROCEEDINGS)

22 MR. BRISSETTE: May I approach the witness?

23 THE COURT: You may.

24 Q. (BY MR. BRISSETTE) Captain Wilson, did you
25 have a camera with you that took photographs that night

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1 inside the fire scene where there's no visibility?

2 A. A still camera?

3 Q. Yes, sir.

4 A. No.

5 Q. So the fire scene has to have photographs taken
6 by somebody else when the atmosphere is clean and you
7 can see into it, correct?

8 A. Correct.

9 Q. I'm going to show you State's 154 and 155.
10 Does that look like the fire scene that you saw that
11 night after the smoke had cleared before you left the
12 scene?

13 A. Yes. This is the closet.

14 Q. All right. That's the closet that you took
15 your -- is it your Polycon (sic) bar?

16 A. Halligan bar.

17 Q. Halligan bar. And poked a hole in it in 155;
18 is that correct?

19 A. We breached a hole through the Sheetrock, yes,
20 sir.

21 Q. Now, do you see in State's 154 a -- a No. 3
22 in -- in the photo?

23 A. Yes, sir.

24 Q. You understand that fire investigators came
25 behind you and took photos and did an origin and cause

1 investigation; is that correct?

2 A. Absolutely.

3 Q. And you didn't have a camera with you, but do
4 you recognize what's depicted here in this to be the
5 same area red to red here of items --

6 A. Uh-huh.

7 Q. -- that were in the closet as you went through,
8 trying to put out the fire?

9 A. Absolutely.

10 Q. No doubt about that, that's the photos -- the
11 room that you remember that night as the red room?

12 A. That is the closet that we ended up in and that
13 we breached the hole to -- to figure out where the
14 origin -- where this fire was -- was from.

15 Q. State's Exhibit 32?

16 A. Yes, sir.

17 Q. In the center of State's 32, there appears to
18 be a double pane window --

19 A. Uh-huh.

20 Q. -- on a -- either a wood or vinyl siding
21 structure; is that correct?

22 A. That is correct.

23 Q. It appears to have a concrete poured foundation
24 with a brick veneer going up to the bottom of the
25 window; is that correct?

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1 A. Absolutely.

2 Q. Is that the window you had to dive into that
3 was not depicted here in State's Exhibit No. 5?

4 A. Yes.

5 Q. It's a daytime photo, but is that a
6 representative, minus the fire that was coming out the
7 window when you dove in, that night on December 18th,
8 2009?

9 A. Myself and Apparatus Operator Holland, yes.

10 Then we had firefighter Eddie Cutrer that was feeding us
11 the line -- the inch and three-quarter preconnect.

12 MR. BRISSETTE: Your Honor, the State would
13 reoffer State's 32, 154 and 155 for all purposes.

14 THE COURT: Mr. Cummings?

15 MR. CUMMINGS: Judge, I think he's
16 satisfied my objection.

17 THE COURT: All right. State's Exhibits
18 32, 154, 155 are admitted.

19 (State's Exhibit No. 32, 154-155 admitted)

20 MR. BRISSETTE: May they be published, Your
21 Honor?

22 THE COURT: They may.

23 Q. (BY MR. BRISSETTE) Captain, can you show the
24 members of the jury State's Exhibit 32 where the window
25 that was on fire that you dove into?

1 A. We extracted these two windows right here.

2 Q. Was the porch on fire here to the left of the
3 windows you went in when you were going in, or is
4 that -- had that been knocked down at that point?

5 A. They were knocked down at that point.

6 Q. State's Exhibit 154, where are we looking at in
7 this picture, Captain?

8 A. This is the closet that we came in and that we
9 ended up.

10 Q. Do you see the holes in the upper right-hand
11 corner of 154 that you -- you made that night?

12 A. Right here, yes, sir.

13 Q. And are those the same holes that are depicted
14 here in a different angle in State's 155?

15 A. Absolutely, these two right here.

16 Q. Do you have an opinion as to -- or do you know
17 where those -- what's on the other side of that wall
18 that night?

19 A. It was a bedroom and lots of -- lots of heat,
20 lots of smoke and lots of fire.

21 Q. Once you backed out of this area, where did you
22 go to to extinguish the fire in --

23 A. We tried to make our way back up this
24 direction, and we were unable to from debris, couldn't
25 see; and that's when myself and -- and Apparatus

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1 Operator Holland decided to come back out, so we backed
2 out here, we crawled up -- back up on the bed because
3 there's a large bed in this particular bedroom,
4 getting -- trying to get through, getting back out to
5 exit the building where the -- where we came in.

6 Q. Were you able to go around to the D side of the
7 structure and -- and work on suppressing the fire in
8 that CD corner bedroom?

9 A. Exterior, yes, sir.

10 Q. And were you able to make an exterior attack
11 enough to chase the fire and knock it down enough to put
12 it out?

13 A. We -- yes. We knocked it down and got a pretty
14 good knock on it.

15 Q. What is the overhaul process of the fire?

16 A. The overhaul process is you come in, and
17 it's exactly how it sounds. You're overhauling, getting
18 all the debris, getting all the chase -- you definitely
19 use the camera in this aspect so that you can -- there's
20 always the hidden -- like the wall. There's the -- the
21 void spaces with the Sheetrock. You use the camera,
22 find the hot spots and tear that wall down or tear --
23 put directly (sic) water onto the hot spots.

24 Q. Since we've talked about two cameras now,
25 Captain, you're talking about your thermal imager, the

1 third generation that you have --

2 A. Yes, sir, absolutely.

3 Q. There were several searches of the residence
4 looking for any victims; is that correct?

A. Yes.

6 Q. Did you and the Mansfield personnel that were
7 out there that night, did you come across a victim in
8 the AD corner bedroom?

9 A. Yes, sir. Right here when we -- when we were
10 exiting back out. And the only reason we saw that --

11 MR. CUMMINGS: Objection, Your Honor,
12 nonresponsive.

13 THE COURT: Sustained. Rephrase.

14 Q. (BY MR. BRISETTE) Can you tell us as you were
15 backing back out, do you free walk back out, or do you
16 use the hose for an aid?

17 A. We were using the hose to get back out, and at
18 that time it had -- had cleared up a little bit,
19 smoke-wise.

20 Q. As the atmospheric conditions improve in the AD
21 corner bedroom as you backed out, were you able to see
22 anything?

23 A. Yes, sir.

24 Q. Did you see a victim?

25 A. Yes, sir.

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1 MR. BRISETTE: May I approach the witness?

2 THE COURT: You may.

3 Q. (BY MR. BRISETTE) I'll show you what's been
4 admitted as State's Exhibit 57. You talked earlier
5 about having the rubbish pole or a straight pole in to
6 pull ceilings; is that correct?

7 A. That's correct.

8 Q. Where was the victim you found in -- and that's
9 depicted here in 157 in that AD corner bedroom? Where
10 was this victim found? If you could point it out on the
11 map for us.

12 A. In this area right here.

13 Q. And State's 157, does the body that's laying
14 there appear to have some drop-down from the ceiling
15 being pulled?

16 A. Yes, sir. That's the Sheetrock from the --
17 that we pulled down when we made our initial attack.

18 Q. And the body also appears to have -- whether --
19 some type of insulation or other things on there. Is
20 that your opinion based on looking at this photo?

A. Yes, sir.

22 Q. State's 158, do you see more of the -- the fire
23 debris that was accumulated on top of the victim?

24 A. Yes, sir, all in here and all the Sheetrock.

25 Q. When you came in initially on the bed, did you

1 do a search of the bed as you went across it?

2 A. We tried. We just could not see. When we
3 started crawling across the bed, you could -- you could
4 feel we were on the, you know, the mattress, so there
5 wasn't -- you couldn't see anything or -- or feel
6 anything.

7 Q. And in State's 159, what is the accumulation of
8 the items that are around the body in this picture?

9 A. This is all the Sheetrock, and this gray is --
10 is insulation -- what appears to be the insulation. And
11 it's broken down in that -- in that state from the
12 water. When you -- when you apply water, it usually
13 shrinks up and breaks down.

14 Q. Did you apply a lot of water to this fire?

15 A. In this particular room we did not because we
16 were pulling ceiling trying to -- like I said, trying to
17 chase the fire, find -- find the location.

18 Q. Do you understand that others may have put
19 water in that window that you went in before you went
20 in?

21 A. They may have, yes.

22 Q. Okay.

23 A. We were actually in -- in -- I know that they
24 did because they -- they weren't very effective, and
25 that's when we jerk our mask off and we -- we pulled

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1 both those large -- those twin windows out so we could
2 gain access and so we could get in there into a larger
3 opening.

4 MR. BRISETTE: May I publish 159 to the
5 jury, Your Honor?

6 THE COURT: Granted.

7 Q. (BY MR. BRISETTE) Captain, at some point
8 throughout the night once the initial suppression
9 activities were done, you weren't allowed to go just
10 yet. They had to use your quint for some stuff, did
11 they not?

12 A. Yes, sir.

13 Q. I believe your generator had to be used; is
14 that correct?

15 A. That's correct.

16 Q. Do you recall what time you and your company
17 were allowed to go back to Mansfield?

18 A. Right after 3:00, 3:00 o'clock in the morning.

19 MR. BRISETTE: Thank you.

20 Pass the witness.

21 THE COURT: Cross-examination?

22 CROSS-EXAMINATION

23 BY MR. CUMMINGS:

24 Q. Good morning, Captain?

25 A. Good morning.

1 Q. I'm Fred Cummings. I'm going to ask you a few
2 questions. Okay?

3 A. Okay.

4 Q. Did you prepare a report associated with this
5 file at all?

6 A. No, sir.

7 Q. The -- the reason that you were called is
8 there's a -- an agreement countywide or area-wide -- I
9 don't know which it is -- where you-all assist each
10 other; is that correct?

11 A. That's correct.

12 Q. I believe you talked about whether or not it
13 was some sort of a --

14 A. Automatic aid or mutual aid.

15 Q. Yes, sir. And you said this was an automatic
16 aid?

17 A. I'm not sure. I don't know what the contract
18 reads for the two agencies -- two cities.

19 Q. Okay. I thought you said that. But what's the
20 difference?

21 A. One is automatic. It's automatically done.
22 Mutual aid, you call and request it. Automatic aid is
23 when they -- the dispatchers at the -- like say for
24 Kennedale, it comes up on their CAD as -- if they're
25 calling for more apparatus or they go to complete the

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1 first alarm, it has a certain number of apparatus from a
2 certain number of cities in that area of the city.

3 And being on that part of Kennedale, I
4 don't know. I'm sure that we were pretty high on the
5 list for automatic aid or mutual aid. Like I said, I
6 don't know what the contract reads. And it was
7 deployed. Kennedale dispatch called our dispatch, and
8 then we were toned out.

9 Q. Okay. So you had a three-man crew on your
10 piece of apparatus?

11 A. That's correct.

12 Q. On the -- in the pecking order or the rank
13 structure, however -- whatever terminology you want to
14 use, you're three rungs up the ladder; is that right?
15 In other words, there's an engineer and a lieutenant
16 below you normally?

17 A. There's a lieutenant. We're going down,
18 correct?

19 Q. Yeah.

20 A. It's captain, lieutenant, engineer or apparatus
21 operator, and then firefighter.

22 Q. Okay. But you were on apparatus working with
23 the -- your other two firefighters --

24 A. Personnel, yes, sir.

25 Q. Okay. You said that when you responded, you

1 observed smoke or fire coming out of both the D side and
2 the B side; is that accurate?

3 A. Well, the -- the A, D and B.

4 Q. Okay. Where on -- specifically, do you recall
5 on the particular sides of the house where you see the
6 flames or smoke emitting from the structure?

7 A. We were concentrating on this side.

8 Q. The D side?

9 A. Yes, sir, the AD side.

10 Q. Okay. And was that coming from the windows on
11 the D side, or was it already through the roof?

12 A. It was in the windows and up in the gables.

13 Q. Okay.

14 A. But to say that it has burned through and
15 vented through the roof, unable to tell at that time.

16 Q. Okay.

17 A. Because we were -- and it was on the other side
18 of the roof -- the ridge line, so when I walked around
19 and -- and did try to do a 360 to get a size-up to look
20 at the windows, look and see what's going on, that's
21 when I noticed the power lines down, and I'm -- there
22 was -- our battalion chief was on scene, and I
23 communicated to him that that was a priority we needed
24 to take care of that, and he said that he would take
25 care of that, and so we proceeded to do fire

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1 suppression.

2 Q. Who is your battalion chief?

3 A. At that time it was John Watson.

4 Q. John Watson?

5 A. John Watson, yes, sir.

6 Q. If there was a report generated with your
7 agency, do you know?

8 A. There was, yes, sir.

9 Q. Okay. Did you use that to refresh your
10 testimony or refresh your memory for your testimony?

11 A. I looked at it, yes, sir.

12 Q. Okay. Was --

13 A. I did not write it. The battalion chief, John
14 Watson, wrote it.

15 Q. Okay. Is that -- did you use anything else to
16 prepare for your testimony?

17 A. No, sir.

18 Q. Just the report that your agent -- so each of
19 the agencies that responded -- I -- I believe there were
20 three -- would do a report of their own normally?

21 A. Normally. I don't know what Kennedale's, you
22 know, procedure would do -- I mean, Forest Hill. I know
23 that Kennedale would do it just because it's in their --
24 their district and they were first on, and it's their
25 fire. So it's their responsibility to do the report.

1 Like I said, I don't know what Forest Hill does. I
2 don't know what their policies and procedures are.

3 Q. Okay. You talked about what is -- Mr.
4 Brissette took you through some fire basics. What is
5 necessary at -- and I don't have the terminology down as
6 he does. I don't understand it quite as well as he
7 does. But essentially, you've got to have fuel and
8 oxygen, and there was some other factor that you -- that
9 is important to you as a firefighter.

10 When you rolled up, this -- this door right
11 here was already open; is that accurate?

12 A. I don't know.

13 Q. Did you see any fire emitting that portion --

14 A. Yes.

15 Q. -- of the structure?

16 A. Yes.

17 Q. Okay.

18 A. But with our assignment when we got on, that
19 wasn't -- that wasn't part of my assignment. No, I
20 wasn't concentrating on that any way, shape or form.

21 Q. Y'all are very regimented as far as having a
22 command structure --

23 A. Absolutely.

24 Q. So when you show up, if you're -- I believe you
25 said if someone else is already out there, you report to

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1 whoever's in charge, take your assignment and go after
2 that; is that right?

3 A. Absolutely.

4 Q. Okay. When you respond to a fire, generally --
5 in over 19 years, I imagine you've responded to quite a
6 few, correct?

7 A. Yes, sir.

8 Q. Okay. Is it your practice to kick doors or --
9 or break windows in an effort to find out whether
10 someone's inside, or is that something you do, or is
11 it --

12 A. First you turn the doorknob, see if it's
13 unlocked, and you try before you pry.

14 Q. Okay. Obviously.

15 A. If it doesn't open, then you kick it.

16 Q. Okay. What I'm wondering about is the
17 introduction of additional oxygen to a -- to a structure
18 that's already apparently got fire within.

19 A. Yes, sir.

20 Q. Is that a concern?

21 A. When -- on this particular one, it wasn't
22 because it was already ventilating. There's already
23 heat and a lot of smoke and super gases that were
24 already ventilated.

25 It would be a concern if it was not showing

1 that because then that particular container is starved
2 for oxygen. Obviously, this particular scene had enough
3 oxygen because it was free burning.

4 Q. At the time you arrived?

5 A. At the time we arrived, yes, sir.

6 Q. Sure. And that's what you're here to talk
7 about.

8 A. Yes, sir.

9 Q. As far as your personal experience.

10 You did prepare or assist in the
11 preparation of the diagram that's depicted here for the
12 benefit of the jury throughout your testimony as State's
13 Exhibit No. 5?

14 A. Did I prepare them?

15 Q. Or assisted in the preparation of it.

16 A. Of actually drawing this and stuff?

17 Q. Or present when it was done.

18 A. I looked at it, but I didn't have anything
19 of -- of preparing it.

20 Q. Okay. What I want to focus on is, I'm unclear
21 about the closet and how you got into it and that sort
22 of thing: It's hard to tell with the colors.

23 You talked about going back in here
24 realizing -- back in here, being this green bathroom, I
25 believe?

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1 A. Yes, sir, in the hallway.

2 Q. And this is -- this is the hallway as well as
3 bathroom that's green; is that fair?

4 A. Yes, sir.

5 Q. Okay. There's no -- I can't tell whether this
6 line ends or is missing, whether there's entry into this
7 pink room, this corner room CD, corner room or not. Is
8 that a solid wall there? Is that what you found when
9 you went in there?

10 A. We made it into -- into -- into the bathroom,
11 and we were unable -- we did not make it into here.
12 We -- that's when we decided to -- because in this area
13 it was really hot, and there was a lot of smoke and
14 superheated gas. That's when we decided to come back
15 out on the hose line and exit out of the A side.

16 Q. Okay.

17 A. Where we went in.

18 Q. Okay.

19 A. And do an exterior attack.

20 Q. So going to the orange room.

21 A. Yes, sir.

22 Q. There appears to be a door between the orange
23 room on corner AD and the pink room on corner CD; is
24 that correct?

25 A. That's what the illustration shows.

1 Q. You didn't experience that because you went
2 into a closet?

3 A. Yes. Right here this closet, but those
4 pictures --

5 Q. Would you use your laser again so I can see?

6 A. Right here.

7 Q. Okay. So there's a closet between these two
8 rooms, and that's what you experienced and actually
9 broke through the two rooms with your equipment,
10 correct?

11 A. Yes, sir.

12 Q. Okay. And your testimony was you -- strike
13 that.

14 I'm going to just ask you, did you go into
15 the pink room?

16 A. No, sir.

17 Q. Okay.

18 A. Not from interior.

19 Q. All right. Let me ask you about the windows
20 you removed in order to assist your fire suppression
21 efforts. You -- we saw a photograph that I believe
22 depicted the A side, and you told us that that was one
23 of the windows you removed your mask --

24 A. Two windows.

25 Q. Two windows?

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1 A. Yeah. It was -- that's what the picture
2 showed, yes. And I distinctly remember pulling two wood
3 case windows out.

4 Q. Okay. So when you say two windows, you're
5 talking about this unit right here?

6 A. Yes, sir.

7 Q. Did you remove the windows from the D side of
8 that same room as well?

9 A. No, sir.

10 Q. Okay.

11 A. The ones in front.

12 Q. Well, that's why I was unclear because you said
13 two, and I wanted to make sure --

14 A. It was a pair.

15 Q. On the A side on -- where was the -- the bed
16 that was contained within the room on the AD corner?

17 A. In the orange?

18 Q. Yes, sir.

19 A. Right here.

20 Q. So it was -- this is -- in the conditions when
21 you went in there, you were having difficulty seeing; is
22 that correct?

23 A. Absolutely.

24 Q. So in your fire suppression efforts with the
25 limited vision that you had and that sort of thing, were

1 you all going -- or having to go across that -- I

2 believe you said mattress, and that sort of thing?

3 A. We were -- and pulling ceiling at the same
4 time.

5 Q. Okay. At that point you had not discovered the
6 body in that room; is that correct?

7 A. No, sir.

8 Q. To make sure I'm really clear, your assignment
9 was essentially associated with the -- this particular
10 end of that house; is that right?

11 A. Correct.

12 Q. And that's where you remained until --

13 A. That's where I remained the entire scene.

14 Q. Okay. Thank you, Captain.

15 A. Thank you.

16 MR. CUMMINGS: Pass the witness.

17 THE COURT: Redirect?

18 MR. BRISSETTE: Yes, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. BRISSETTE:

21 Q. Captain, are there thermal boundaries to your
22 turnout here?

23 A. Thermal boundaries as the limitations of
24 failure?

25 Q. Yes, sir.

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1 A. Yes.

2 Q. What kills firefighters?

3 A. The -- the heat and objects mainly falling
4 and -- and knocking out -- running out of air. I mean,
5 there's a lot of -- a lot of different things. It
6 depends on which -- which scene and which, you know,
7 NIOSH report that you want to read, but...

8 Q. When you're in the green area there in the
9 hallway, you were the lead -- you had the -- the knob of
10 the hose, correct?

11 A. Yes, sir.

12 Q. Were the thermal boundaries, in your opinion,
13 too great of a risk to enter the CD corner bedroom at
14 that point from inside?

15 A. Yes, sir. That's why I was -- my decision to
16 come back out and take a different angle. That's why we
17 came back out and did an exterior.

18 Q. Mr. Cummings asked you a little bit about
19 ventilation and how it works and how oxygen is part of
20 that -- part of that fire tetrahedron --

21 A. Yes, sir.

22 Q. -- that you have to have.

23 If someone were to leave the back door of
24 the residence open after starting the fires --

25 A. Uh-huh.

1 Q. -- in the north and south section of the house,
2 would that provide a source of oxygen to fuel a fire
3 such as you saw that night?

A. Absolutely.

Q. Thank you.

MR. BRISSETTE: Pass the witness.

THE COURT: Recross?

RECROSS-EXAMINATION

BY MR. CUMMINGS:

Q. Do you remember the weather conditions that
night?

A. Do I remember the weather conditions?

Q. Yes, sir.

A. Cold, foggy, drizzly.

Q. If there was earlier testimony approximately 29
degrees, something like that, is that consistent with
your memory?

A. Oh, yeah, yeah, because when you're wet and you
come out and take your equipment off and -- yeah, it
was -- it was cold.

Q. Do you remember whether or not there was any
sort of wind?

A. Any wind?

Q. Yes.

A. Not to the best -- I mean, the smoke was pretty

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much coming and going straight out. It wasn't going
from east to west or something that was notably --
that -- and that's -- and that's definitely something
that we look at on size-up. If it was high wind
conditions where the -- the seat of the fire where the
point of origin, and that's -- that would dictate when
it gets into the attic and runs the attic, but there was
no -- notably no high wind that night.

Q. Okay. Did you ever go into this room that's
depicted in tan, which I believe is the kitchen?

A. Yes, sir. That's what I stated -- I stated
earlier. We came -- when we came in initially, we came
into the blue room, and we went through here, ended up
in the tan in the kitchen, and we ended up on that C --
C side, and the door was open. The kitchen door was
open.

Q. This one --

A. We ended up outside, and that's when we
redirected and came back in and tried to find the seat
of the fire.

Q. Okay. Thank you, sir.

MR. CUMMINGS: Pass the witness.

MR. BRISSETTE: Nothing else, Judge.

THE COURT: May the lieutenant be excused
subject to the Rule?

MR. CUMMINGS: Yes, please, Your Honor.

THE COURT: All right. I mean, Captain,
excuse me. You may not discuss your testimony with
anybody else except for the lawyers involved. You may
not discuss your testimony around others who are
respective witnesses as well.

THE WITNESS: Yes, sir.

THE COURT: All right, sir. You may step
down. Thank you.

THE WITNESS: Thank you.

(Witness retires)

THE COURT: State, call your next witness.

MR. BRISSETTE: Lieutenant Galbreath.

THE COURT: Lieutenant Galbreath, please.
(Witness enters courtroom)

THE COURT: Will you please raise your
right hand.

(Witness sworn)

THE COURT: Please be seated, sir.

You may proceed when you're ready.

JOSHUA BRETT GALBREATH,
having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRISSETTE:

Q. Good morning, sir. Can you introduce yourself

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to the jury?

A. Lieutenant Galbreath, Forest Hill Fire.

Q. What's your first name?

A. Joshua Brett Galbreath.

Q. Where did you grow up?

A. Joshua, Texas.

Q. And where is Joshua located? Is that -- what
county is that in?

A. Johnson County.

Q. When did you come to work for the Forest Hill
Fire Department?

A. July of 2003.

Q. You went through the fire academy, I assume, at
some point?

A. Yes, sir.

Q. What fire academy did you go to?

A. Johnson County.

Q. And do you hold a state certification for a
firefighter in the State of Texas?

A. Yes.

Q. What is that?

A. Firefighter EMT.

Q. Is there different levels of firefighters?

A. Yes.

Q. What level do you hold?

1 A. Firefighter 2.

2 Q. Is that the intermediate?

3 A. Intermediate, yes.

Q. And you hold an EMT basic, I believe --

A. Correct.

Q. -- is that correct?

How big a city is Forest Hill?

A. It's about six square miles.

Q. What does it neighbor?

A. Kennedale, Fort Worth, Everman and touches a little Arlington.

Q. Is -- is there an association of fire agencies, the fire departments in this area, the county, is there an acronym or association that you belong to?

A. Yes. It's SERPA. I can't remember what it stands for, but it's a group of cities that respond for each other.

Q. Is SERPA how you do your mutual aid for this area of the county?

A. Mostly for Kennedale and some of the neighboring cities, we have, you know, mutual aid agreement to where we run quite a bit. It's like a station.

Q. Now, for Forest Hill, you have your firefighting activities. Does Medstar also provide

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ambulance service for your city?

A. Yes.

Q. When we look back to December the 17th, that shift that day -- I assume you work a 24-hour shift like the other fire agencies?

A. Correct.

Q. That day, how many pieces of equipment did -- did Forest Hill have to commit to a fire in their city?

A. That day we -- we had one apparatus -- well, we had manpower for one apparatus. We have enough apparatus -- we have a rescue truck, a quint, an engine a squad and air trailer and brush trailer.

Q. How many firefighters did you have on duty that day?

A. Four.

Q. And did all four arrive with you to a call in Kennedale in the early morning hours of Friday, December 18, 2009?

A. Yes.

Q. As you're going to another city, what are you doing as the officer on the ride over?

A. On the ride over talking on the radio, getting ready, trying to find out what's going on, the location of it, what -- what we need to do and think about coverage for our city.

Q. What do you mean by that?

A. Well, if we go to another city, that leaves our city with no coverage, so we have to notify somebody such as Fort Worth or Everman or something like that in case we get a call in our city, they have to come run the call.

Q. And did you make the necessary notifications back to your alarm center that you were going to be tied up for awhile in Kennedale?

A. Yes.

Q. Do you have maps for all the neighboring cities?

A. Yes.

Q. Do your maps also have to go to where hydrant places are in the various cities?

A. Correct.

Q. Why is that important to you as an officer?

A. Well, when -- when you're coming up on scene, usually the second truck in is the one that gets water usually, but -- and you need to know where the hydrants are to where you can get water to the water -- the fire truck that's working the scene.

Q. What do you mean the second truck in gets the water?

A. Such as if we had a fire in Forest Hill, we

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call for mutual aid. You know, sometimes you get there and you don't know what's going on, you're trying to figure out and you need water, so you'll tell the next engine or truck, come in to say, you know, drop a hose at the hydrant and bring it in to us.

Q. The hoses universally fit other vehicles?

A. Everybody but Fort Worth.

Q. They're special?

A. They run four inch; everybody else runs five. But we have adaptors that go from four to five, so it's pretty much universal, just a little extra step.

Q. When you got there, did you park in a particular parking lot?

A. Yes. We pulled into the church parking lot.

Q. Four people on your -- your quint. Where did you go? Did you report to anybody?

A. Yes. We reported -- first we checked on scene, let them know we were there. They -- they told us to get with command. We went to command and see what he wanted us to do.

Q. Was that the fire chief, or was that Lieutenant Cleveland at that point?

A. That was the fire chief.

Q. And without going into the conversation, did you do something?

1 A. Yes.

2 Q. Where did you go?

3 A. He sent us to pull a secondary line off --

THE REPORTER: I'm sorry, sir?

THE WITNESS: To pull a secondary line off

4 the -- their truck and go to the -- what I would say the
5 garage, AB corner.

6 Q. (BY MR. BRISSETTE) Were you able to do that?

7 A. Yes.

8 Q. I believe there's a laser pointer in front you,
9 Lieutenant. Can you show the members of the jury where
10 you went on the AB corner?

11 A. It's going to be right here.

12 Q. Was there a pedestrian doorway, a 30-inch, a
13 32-inch type doorway like the jury's been walking
14 through here in that area?

15 A. Yes. It was apparently used to be a garage,
16 and they converted it into, I guess, a garage apartment.

17 Q. What were the atmospheric conditions when you
18 walked out to the door?

19 A. When we got to the door, heavy, heavy smoke,
20 fire coming out.

21 Q. What did you do to try to tackle that fire?

22 A. I had my guys go start being defensive right
23 here. I went around the house, did like a 360 for

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1 safety reasons. My guys pulled the hose, started
2 putting the fire out.

3 Q. Are they standing up to do this?

4 A. Right now, yes. They're not going in -- it's
5 not sustainable to go in there, unsafe to go into that
6 right at that point.

7 Q. What do you mean by not sustainable?

8 A. Well, the -- the atmosphere was too dangerous,
9 a lot of smoke, you couldn't breathe, it -- it wasn't no
10 reason to go in there at that point.

11 Q. And as the officer in charge of your company,
12 you have to make sure, first and foremost, that your
13 guys got back to the station at the end of the shift; is
14 that correct?

15 A. Correct.

16 Q. Were you able to get enough water in there to
17 make an interior attack?

18 A. We -- we knocked it down pretty good. We did
19 advance in after we knocked it down, got in probably
20 five to ten feet at the most to try to reach and hit
21 this back wall up here because it was on fire too.

22 Q. Did -- is Forest Hill equipped with a thermal
23 imager?

24 A. Correct.

25 Q. And did you have that as the officer that

1 night?

2 A. Yes. I didn't have it. One of my guys had it.

3 Q. Were you able to look through it that night to
4 see what was in that room, or was it useful at all when
5 you were looking at the room on fire?

6 A. At that point it was not usable. If you were
7 to use a thermal imager, all it would show was solid
8 white because there was so much -- everything had
9 already heated up to that max temperature, and it would
10 have all been the same. It wouldn't show nothing.

11 Q. How long did it take you to get that room under
12 control, approximately?

13 A. I would say approximately 5, 10 -- maybe 10 to
14 15 minutes.

15 Q. And by "under control," what does that mean to
16 you?

17 A. To me it's, you know, there's still smoldering,
18 some fire, but it's not progressing. It's turned the
19 other way, it's going -- you know, it's not growing.

20 Q. Did you go in at that point inside the
21 residence, or did you back out again and -- and wait for
22 further instructions?

23 A. Well, we -- all we did was we went, you know,
24 10 to 15 feet and put this out. We did come back out
25 and got further instructions after that -- after we

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1 knocked it down.

2 Q. What were your next orders?

3 A. We were told to go in through the front door
4 and do a primary search.

5 Q. Where did your primary search -- search consist
6 of, Lieutenant?

7 A. We went in -- we went in through here. These
8 areas were -- were light smoke, so we were walking. We
9 checked in these rooms, this room. We went back into
10 here, checked a little bit. And then there was still
11 heavy smoke in this area. We -- we -- we did a real
12 quick one in here too, and --

13 Q. At that point, Lieutenant, is it -- is there a
14 term called a left-hand or a right-hand search in the
15 fire service?

16 A. Correct.

17 Q. What does that mean?

18 A. Well, you -- you try to stay in a pattern so
19 you can search all areas. So you start -- say you start
20 to the left and you go to the left. And you search
21 everything all around to the left and back out.

22 Q. Why is that important for the fire service?

23 A. Well, because when you're in there, these items
24 you can't see, the -- you want to and -- and make sure
25 and get -- cover everything, all areas.

1 Q. At some point in time, as ventilation was added
2 to the structure, were you able to -- to meet up with
3 elements from Kennedale in the -- the kitchen area
there?

4 A. Yes.

5 Q. And do you remember who you had a conversation
6 with?

7 A. I ran into Lieutenant Cleveland here, right
8 here in this area, and at that time I told him that we
9 had a -- a primary all clear on this area. But not
10 feeling comfortable with this area over here because of
11 the smoke still, I told him I wanted to go back and
12 check again and --

13 Q. Did you have an occasion to go back into the AB
14 corner bedroom at that point?

15 A. Yes. We went back in and searched, and that's
16 when we discovered a body lying in the bed right here.

17 Q. Did you make any notifications back to
18 Lieutenant Cleveland?

19 A. It was still heavy smoke in there. It's hard
20 to see. So I went back and got Lieutenant Cleveland and
21 said, I think I got a body; I want you to come back here
22 and confirm.

23 So we both went in there, and, yes, there
24 was a body.

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1 Q. Everybody has different terms in what heavy
2 smoke may mean. When you're talking heavy smoke for
3 you, what are we talking about, visibility-wise?

4 A. 12 to 18 inches, at the most.

5 Q. So to see the object that you saw that you
6 thought was a body, you had to be 12 to 18 inches?

7 A. Correct.

8 Q. Was the body up on some high object, or were
9 you down on the ground looking at this?

10 A. This body was on the bed.

11 Q. Was the bed in the upright condition when you
12 found it?

13 A. It -- it was up, but it wasn't -- it had fell
14 off -- it was off the -- the box springs and mattress.
15 That's about the height it was.

16 MR. BRISSETTE: May I approach the witness,
17 Your Honor?

18 THE COURT: You may.

19 Q. (BY MR. BRISSETTE) Lieutenant, I'm going to
20 show you what's been marked for identification purposes
21 as State's Exhibit 85 and 86. Do you recognize State's
22 Exhibits 85 and 86?

23 A. Yes.

24 Q. Do State's Exhibit 85 and 86 have an image in
25 the upper right side of 85 and 86? Is there a photo in

1 this -- this full exhibit?

2 A. Yes.

3 Q. And does the photo have a trim ring color on
4 it?

5 A. Yes.

6 Q. And what color is the trim ring?

7 A. Orange.

8 Q. Is there a corresponding diagram or map that's
9 in the lower left-hand corner?

10 A. Yes.

11 Q. Is it consistent with what's on the screen in
12 State's Exhibit No. 5?

13 A. Yes.

14 Q. And the lower left-hand corner of 85 and 86, is
15 the AB corner the only corner -- only room that's
16 highlighted?

17 A. Correct.

18 Q. Does the corresponding trim ring around the
19 photo in 85 and 86 match the corresponding shade in the
20 bedroom for AB?

21 A. Yes.

22 Q. And is this the individual that you saw that
23 night on the bed and box springs that you've described
24 recently here to the jury?

25 A. Yes.

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1 Q. In State's Exhibit 85, you didn't have a
2 digital camera with you that night, did you?

3 A. No.

4 Q. Can you see -- can you make an opinion in
5 State's 85 as to the atmospheric conditions in that
6 picture once the investigators came in? Is there --
7 what's this up here on the upper right-hand side corner
8 of 85? What are we looking atmospheric-wise?

9 A. It's clear.

10 Q. In looking at '86, is it clear as well? So the
11 smoke is -- is ventilated out of here?

12 A. Yes.

13 Q. Are these true and accurate pictures, 85 and
14 86, of the remains that you found in the orange room
15 listed as the room AB on State's 5 up on the screen?

16 A. Yes.

17 MR. BRISSETTE: At this time, Your Honor,
18 the State would tender to Defense Counsel State's 85 and
19 86, and offer them for all purposes.

20 MR. CUMMINGS: Your Honor, I'm not sure if
21 we have a running objection or not, but I want to make
22 sure that we have preserved our earlier objections made
23 prior to trial.

24 THE COURT: All right.

25 MR. CUMMINGS: We wish to renew those

1 objections in an abundance of caution.

2 THE COURT: All right. Your objection is
3 overruled. 85 and 86 are admitted, and you will have a
4 running objection.

5 (State's Exhibit Nos. 85, 86 admitted)

6 MR. CUMMINGS: Thank you, Your Honor.

7 MR. BRISSETTE: Your Honor, may 85 be
8 published to the jury?

9 THE COURT: It may.

10 Q. (BY MR. BRISSETTE) Lieutenant, before I walk
11 up and show the jury the small photo, can you show us
12 here on State's 85 -- if you can turn around and keep
13 your voice up -- where are we looking at the remains
14 here in State's 85, if you can just point to it?

15 A. Right here.

16 Q. Lieutenant, did you conduct a secondary search
17 as well?

18 A. Yes. At that time when we found the first
19 body, there was still fire activities going on over
20 here. We -- we ended up searching as far as the kitchen
21 and this room here, actually finding a -- a half-size
22 doll, you know, still -- thought we had another one, but
23 it was just, you know, about a four-foot tall -- tall
24 doll.

25 So we -- we didn't find anything else over

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1 here. We actually, you know, at that point started
2 looking at stuff like stockings, pictures, you know,
3 trying to get an idea of what could possibly -- if there
4 could be other people in here.

5 We talked -- I talked to Lieutenant
6 Cleveland about the door being -- back door being open.
7 We actually searched back out here in the back pasture.
8 I say pasture; it's a, you know, couple acres lot,
9 thinking that somebody might have been on fire and went
10 out the back door.

11 Q. Directing your attention to the screen as
12 State's Exhibit 230, can you show the members of the
13 jury the area you went back and searched that night?

14 A. We actually searched all the way back in here.

15 Q. Does it continue even past to the right of 230?

16 A. Yes.

17 Q. And you went back to where the next habitation
18 started?

19 A. Yes.

20 Q. Did you find anybody out there?

21 A. No.

22 Q. At some point did you come back in and
23 instructed to conduct a third search of the residence?

24 A. Yes. At this point the -- the -- all the fire
25 had pretty much been knocked down, you know. We're in

1 the mop-up stages. We went back in and went to the --
2 the CD side and was searching. At that time there would
3 have been -- there was already another body discovered
4 by somebody else over here.

5 My guys -- we went into here, and this room
6 was completely burned out. What I mean by completely
7 burned out, there wasn't nothing, you know, of the wall,
8 the ceiling come down, there was nothing on the walls,
9 all the charred stuff on the bottom. We searched
10 around. There was a pile of stuff here, and --

11 MR. MOORE: Judge, I'm sorry. I'm going to
12 object to any testimony regarding a third -- regarding a
13 second or third search on the same basis that we did in
14 the Pretrial Motion to Suppress.

15 THE COURT: Your objection is overruled.

16 Q. (BY MR. BRISSETTE) Lieutenant, when you're
17 looking at the CD corner bedroom --

18 A. Yes.

19 Q. -- if before a fire in any -- let's just take a
20 typical bedroom. All right? Typical bedroom in a
21 Forest Hill apartment or house, ten by ten. If the
22 floor had minimal clutter on it before a fire and a fire
23 completely consumed that room, what would you expect to
24 see on the ground when you go back in on a -- on a
25 search like this? Are you expected to have a lot of

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1 debris?

2 A. Yes.

3 Q. What would that debris consist of? What were
4 you expecting to see when you go in?

5 A. Well, you see charred wood, you see Sheetrock,
6 you know, that was broken into clumps, you see ashes,
7 Sheetrock off the wall, off the ceiling, nails, all kind
8 of stuff.

9 Q. Whatever might have been in the attic space?

10 A. Insulation.

11 Q. Was that consistent with what you saw when you
12 entered the -- the CD room for that third search?

13 A. Yes.

14 Q. Did you have an occasion at some point to come
15 across a metal bar of some kind that was -- was in a
16 particular part of the bedroom?

17 A. Yes.

18 Q. Throughout your investigation there in that
19 room during your -- your search, were you able to
20 determine what the bar was -- was part of, if you know?

21 A. Well, it appeared to be a frame of a bed.

22 Q. And at first glance, were you able to see
23 anything on that bed?

24 A. No.

25 Q. Were you able to remove some debris and make

1 further observations?

2 A. Well, we -- after looking and moving a few
3 things, we found some springs that looked to be remnants
4 of a mattress.

5 Q. Yes, sir.

6 A. And I had my -- my guys reach down with a hook
7 and hook that mattress. And so when he did, he pulled
8 it up, and then we realized there was another body on
9 there.

10 MR. BRISSETTE: May I approach the witness,
11 Your Honor?

12 THE COURT: You may.

13 Q. (BY MR. BRISSETTE) Sir, I'm going to show you
14 what's been marked for identification purposes as
15 State's Exhibit 59. Do you recognize the items that are
16 depicted in the photo in State's 59?

17 A. Yes.

18 Q. All right. Once again, it has a lower inset
19 map that has a -- a colored room and only one room is
20 colored that's from State's 5; is that correct?

21 A. Correct.

22 Q. And the photo trim ring has the same color as
23 the area that's highlighted in the lower part of the
24 exhibit; is that correct?

25 A. Correct.

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1 Q. What is in the photo that's in the upper
2 right-hand corner of the exhibit?

3 A. Looks to be stockings.

4 Q. Why was this important to you during your
5 searches?

6 A. Well, this allows us to know how many people
7 are in the house -- use this house as a residence.

8 Q. And is that something that you use -- use in
9 some of your common sense as the officer that night
10 looking for victims?

11 A. Yes.

12 Q. And are you the one that went to count the
13 stockings?

14 A. Yes.

15 Q. And how many stockings do you count there?

16 A. Four and a little one.

17 Q. There's four large ones; is that correct?

18 A. Correct.

19 Q. And to the right of the white one on the right
20 side, the large one, is there a small white stocking as
21 well?

22 A. Yes.

23 Q. So that would be a total of five?

24 A. Five.

25 Q. Is that a fair and accurate depiction of how

1 you saw it that night?

2 A. Yes.

3 Q. Minus some of the smoke that was probably in
4 your way?

5 A. Correct.

6 Q. State's Exhibit 141, do you recognize what's
7 depicted in 141?

8 A. Yes.

9 Q. And what's depicted in 141?

10 A. It's going to be a body.

11 Q. And what room are we in?

12 A. We're in the CD.

13 Q. Do you see the -- the pole or the piece of
14 metal that you first recognized as part of what's in
15 that photo?

16 A. Yes.

17 Q. And at first were you able to recognize it
18 as -- as a -- subhuman remains?

19 A. At first it was covered up, but once we pulled
20 it up, the mattress up, at that point, yes.

21 Q. Show you what's been marked for identification
22 purposes as 142 and State's 140. Without letting the
23 jury see them, do you recognize what's depicted in those
24 two photos?

25 A. Yes.

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1 Q. What is depicted in those two photos?

2 A. It's a body.

3 Q. Is it the same body that's depicted in 141?

4 A. Yes.

5 Q. In 140 and 142 have -- has more of the debris
6 that had been removed from the victim themselves?

7 A. Yes.

8 Q. And in 142, do you see more of the bed frame
9 that you were talking about earlier?

10 A. Correct.

11 Q. And with each of these photos, do they show
12 different angles or different aspects of the remains
13 that you found in this CD corner bedroom?

14 A. Yes.

15 Q. 142 and 140, they are a fair and accurate
16 depiction of the -- the remains that you saw there at
17 the scene?

18 A. Yes.

19 MR. BRISSETTE: Your Honor, at this time
20 the -- the State would tender to Defense Counsel State's
21 59, 140 through 142, inclusive, and offer them for all
22 purposes.

23 MR. CUMMINGS: Your Honor, may I ask a
24 question on voir dire?

25 THE COURT: You may.

1 MR. CUMMINGS: May I approach the witness?

2 THE COURT: You may.

3 VOIR DIRE EXAMINATION

4 BY MR. CUMMINGS:

5 Q. Lieutenant Galbreath, let me direct your
6 attention to State's Exhibit No. 142. Were you present
7 whenever 142 was taken?

8 A. 142, no.

9 Q. So the hand that's depicted -- the glove hand
10 that's depicted, do you have any idea whose that is?

11 A. I have no idea.

12 Q. Okay. So I guess the answer -- or let me ask
13 you: 141, 140, you weren't present when any of these
14 photographs were taken, were you?

15 A. No.

16 Q. Thank you.

17 MR. CUMMINGS: Your Honor, we renew our
18 previous objection made during the pretrial hearing
19 and --

20 THE COURT: As to what exhibits?

21 MR. CUMMINGS: State's Exhibits 141, 140
22 and 142. Sorry for having them in that order. That
23 particular objection is going to apply to all of them.

24 And that would also include State's Exhibit No. 59.

25 THE COURT: All right. Your objection is

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1 overruled.

2 MR. CUMMINGS: Okay. Excuse me. I'm
3 sorry, Judge.

4 THE COURT: Are you done?

5 MR. CUMMINGS: No, sir.

6 THE COURT: Oh, you may continue.

7 MR. CUMMINGS: Thank you.

8 Back to State's Exhibit 140, 141, 142, we
9 object to the cumulative nature of these three
10 photographs, and we think they are more prejudicial than
11 probative and would like for the Court to conduct a
12 balancing test in regard --

13 THE COURT: I need to see Exhibits 140
14 through 142, please.

15 Regarding your objection regarding the
16 cumulative nature, overruled.

17 Regarding your 403 objection, the Court has
18 conducted a balancing test, and your objection is
19 overruled.

20 Exhibits 59, 140 through 142 are admitted.
(State's Exhibit Nos. 59, 140-142 admitted)

21 MR. BRISSETTE: Judge, may we publish
22 State's 59, 140, 141 and 142 to the jury?

23 THE COURT: Granted.

24 DIRECT EXAMINATION (Cont'd)

1 BY MR. BRISSETTE:

2 Q. Lieutenant, is this the photo you were talking
3 about taken from the full exhibit of 59 of the stockings
4 you were looking at?

5 A. Yes.

6 Q. These are the same stockings you used to search
7 for the bodies by counting the number of them?

8 A. Yes.

9 MR. BRISSETTE: Judge, may the witness step
10 down?

11 THE COURT: He may.

12 Q. (BY MR. BRISSETTE) Lieutenant, if you can step
13 down.

14 A. (Witness complies).

15 Q. If you would, when you're down, please keep
16 your voice up so everybody can hear you, especially
17 Angie. Okay?

18 I'd like you to take this pointer. We're
19 going to do the jury in half. This half first, then
20 we'll move down to this half.

21 In State's 141, can you show me the pipe
22 that you were looking at that you first saw the metal
23 pole?

24 A. Right here.

25 Q. Speak up.

135

1 A. Right here.

2 Q. Okay. It's in the upper right-hand corner of
3 State's 141; is that correct?

4 A. Yes.

5 Q. Let's move down here.

6 Can you show this half of the jury, sir?

7 A. Right here.

8 Q. Once again, you're in the upper right-hand
9 corner?

10 A. Yes.

11 Q. Now, do you see the remains of -- of the
12 individual you saw in this room in this photo?

13 A. Yes.

14 Q. And can you please point that out to the jury?

15 A. Right here.

16 Q. Were these remains of a large person or a small
17 person?

18 A. Small person.

19 Q. Do you have an opinion as to whether or not the
20 person may have been a child?

21 A. Yes. In my opinion it was a child.

22 Q. Can you show this side of the jury?

23 A. Remains right here.

24 Q. Thank you, sir.

25 MR. BRISSETTE: Thank you, Your Honor.

1 Pass the witness.

2 THE COURT: Mr. Cummings, let's take a
3 break unless you want to continue.

MR. CUMMINGS: I'm not going to -- it's ten
minutes till. I might very well be through at the hour.

6 THE COURT: All right. You may proceed.

7 MR. CUMMINGS: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. CUMMINGS:

10 Q. Good morning, Lieutenant.

11 A. Good morning.

12 Q. I want to talk to you about -- just briefly
13 about your time on the scene and your activities while
14 you were there. Okay?

15 When you arrived, in sequence, were you the
16 second department to arrive?

17 A. We arrived pretty much the -- it's going to be
18 the same time as Mansfield did. We were one or two
19 minutes apart. I think they arrived just prior to us.
20 We came in about the same time.

21 Q. Were you -- as the lieutenant, you were the
22 supervisor of your particular piece of apparatus, right?

23 A. Yes.

24 Q. When you got there, did you check with the
25 Kennedale Lieutenant Cleveland to see what it was that

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1 he needed you to do?

2 A. First was McMurray, and then we talked, and the
3 lieutenant was there around there, too.

4 Q. McMurray was already on the scene?

5 A. Yes.

6 Q. Okay. And what was your area of -- what were
7 you told to do?

8 A. Pull a secondary line and fight this fire over
9 here.

10 Q. So your responsibility was the AB or B side?

11 A. The AB corner, the fire.

12 Q. Okay. But throughout your -- if I understood
13 your direct testimony correctly, once you were through
14 in this area, you had -- you were given additional
15 duties or responsibilities to go to the other portions
16 of the house?

17 A. Yes.

18 Q. Okay. Do you recall about what time you
19 arrived?

20 A. It was after midnight. It was a little after
midnight.

22 Q. When you went into the AB corner, did you go in
23 there with the -- were you -- let me ask this. I'm
24 sorry.

25 Were you still engaged in fire suppression

1 when you went into that portion of the house?

2 A. Yes.

3 Q. Okay. And you knocked down the fire or
4 suppressed the fire before you went and -- and got
5 additional duties?

6 A. Well, before we went in, we knocked the fire
7 down. We were inside this right here. We were right
8 here at the door, and we put the fire out. Once we
9 knocked this area down to where we felt like we could
10 get in there safely, we moved in a little bit like five,
11 ten feet and started putting them in this area, because
12 there was a wall here that you can't -- you know, we
13 were trying to get -- it had already burned through, but
14 we were trying to get water back here in this area.

15 Q. Okay. For purposes of the record, you're using
16 your laser to illustrate the BC corner?

17 A. Correct.

18 Q. Okay. So then what did you do?

19 A. Well, we -- we fought this for a little bit,
20 got it knocked down, pulled out, met up with the -- the
21 Lieutenant Cleveland out here in the front yard, and --
22 no -- yeah, Chief McMurray out in the front yard, he
23 asked us to go in and do a primary search. I believe
24 Kennedale was over here fighting fire still, but -- so
25 we went into the front door and did a primary search.

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1 Q. Okay. The primary search is a -- is -- it's a
2 fire term, is it not?

3 A. Correct.

4 Q. What does it mean?

5 A. The fire search.

6 Q. So you're not looking -- well, when you say
7 "fire search," you're still in suppression efforts.

8 You're looking for hot spots or -- is that fair to say?

9 A. Well, there's two -- you can -- if you come up
10 to a scene and there's unsustainable life in this area,
11 you -- you're -- your suppression, you're putting the
12 fire out.

13 And at the time there's heavy fire on both
14 sides, so we were just assigned this one side. And --
15 and after further investigation, I guess they found
16 that -- that -- that this side could be sustainable
17 life, so that's when we were pulled off to go and do it.

18 Q. Okay. And so if I understand correctly, when
19 you use the term "unsustainable to life," the fire is so
20 bad there there's no possibility of anyone surviving it?

21 A. Correct.

22 Q. Okay. And when you talk about sustainable to
23 life that's the opposite. There's a possibility
24 might --

25 A. There's a possibility that you can get somebody

1 out.

2 Q. Okay. And so primary search, can you tell us
3 again and break it down for me?

4 A. Primary search you usually do in conjunction
5 with suppression because we -- we don't have enough
6 manpower to do all these tasks at one time, so
7 there's -- there's -- there's a couple of ways. You can
8 either take the fire away from the victim, or you can
9 take the victim away from the fire. So if we put the
10 fire out, we still can, you know, save the victim.

11 Q. Okay. How long a period of time before you
12 have extinguished the fire -- let me -- don't use that
13 word. I'm afraid that word has connotations to you
14 that -- or me.

15 I don't need for the finality of it
16 completely being out. I know that takes time to do, but
17 how long before you were you able to go in there without
18 your mask and that sort of thing?

19 A. Well, we -- it was awhile. We -- we had our
20 mask on even when we were doing the search, and then I
21 believe the -- the only time we ever went in without it
22 was when the third search, and that was approximately, I
23 would say, probably an hour into it, 30 minutes to an
24 hour into it.

25 Q. Okay. But you still was with -- well within --

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1 you did your report when? Do you recall?

2 A. My report?

3 Q. Yes.

4 A. Probably about 4:00 o'clock in the morning.

5 Q. Okay. 4:16 a.m. sound right that same day?

6 A. Probably so.

7 Q. Okay. And it was just that one-page report
8 that you completed that day, correct?

9 A. Yes.

10 Q. All right. So you did your report, you were
11 completely done, back at the -- did you do your report
12 at the station?

13 A. Yes.

14 Q. All right. So you were already back home, so
15 to speak, 4:16 a.m. and completed your report. So all
16 of the things that you've told us about took place
17 between arriving shortly after midnight and getting back
18 to the station and completing your report at 4:16,
19 correct?

20 A. Correct.

21 Q. Okay. So when you're in there and you're doing
22 your search, the primary search, you're looking for
23 fire, right?

24 A. When we're doing a primary search, we're
25 looking for sustainable life. We're trying to save

1 victims, save people.

2 Q. Okay. During that primary search, you did
3 locate a body?

4 A. We located a body.

5 Q. Okay. And which room was that in?

6 A. It -- it was the -- the AB side, AB --

7 Q. AB corner. And you'd been in there earlier
8 suppressing the fire?

9 A. Yes.

10 Q. You're still in your fire suppression
11 protective gear?

12 A. Correct.

13 Q. Gloves and masks, and essentially you're having
14 to locate whatever you can through vision only; is that
15 accurate?

16 A. Correct.

17 Q. Okay. Thank you, Lieutenant.

18 MR. CUMMINGS: That's all I have, Judge.

19 THE COURT: Thank you. Redirect?

20 MR. BRISSETTE: No.

21 THE COURT: May the witness be finally
22 excused subject to the Rule and recall?

23 MR. CUMMINGS: Yes, Your Honor.

24 THE COURT: All right. Lieutenant, you may
25 not discuss your testimony with anybody else except for

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1 the lawyers that are directly involved. You may not
2 listen to any other -- anybody's else testimony or
3 discuss your testimony with any prospective witness. Do
4 you understand?

5 THE WITNESS: Yes, sir.

6 THE COURT: All right. Thank you.

7 (Witness retires)

8 THE COURT: We'll be in recess until 1:30.

9 Please be back at 1:15. Thank you very much.

10 (Recess from 12:00 p.m. to 1:40 p.m.)

11 (Open court, Defendant present, no jury)

12 THE COURT: Let's bring in the jury,

13 please.

14 (Jury present)

15 THE COURT: Please be seated.

16 Call your next witness, State.

17 MR. GILL: We call Darrell Hull.

18 (Witness enters courtroom)

19 THE COURT: Mr. Hull, please raise your

20 right hand.

21 (Witness sworn)

22 THE COURT: Please be seated.

23 You may proceed when you're ready.

24 MR. GILL: Thank you.

25 DARRELL HULL,

1 having been first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. GILL:

Q. Sir, would you tell the jury your name, please?

A. Darrell Hull.

Q. And how are you employed or occupied?

A. With the City of Kennedale as a police officer.

Q. And how long have you been employed with the

City of Kennedale as a police officer?

A. Just over 14 years.

Q. And how were you employed before going to work

for Kennedale?

A. As a police officer.

Q. Where?

A. With Weatherford PD.

Q. So how long in law enforcement do you have

altogether?

A. Roughly 17 years.

Q. What is your current rank with the Kennedale

Police Department?

A. Captain.

Q. How long have you been a captain?

A. For five years.

Q. And what year was it that you attended an -- an

academy?

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A. 1993.

Q. And which academy did you attend?

A. Weatherford College.

Q. I -- I take it you graduated successfully?

A. Yes, sir.

Q. And did you receive your commission?

A. Yes, sir.

Q. And have you held your commission continually

then since you received it back in '93 or '94?

A. Yes.

Q. Currently, what level commission do you hold?

A. Advanced.

Q. And what are the different levels that a peace

officer can hold in the State of Texas?

A. Basic, intermediate, advanced and masters.

Q. How long have you held the advanced commission?

A. Roughly nine years.

Q. So you've been a captain with Kennedale for

five years?

A. Yes.

Q. What are your duties as a captain?

A. Operations commander, day-to-day operations,

oversee CID and patrol.

Q. And what is CID?

A. Criminal Investigation Division.

1 Q. So approximately how many officers do you

2 supervise?

3 A. Seven.

4 Q. And is one of those Sergeant Eric Carlson?

5 A. Yes, sir.

6 Q. Is another Detective Jason Charbonnet?

7 A. Yes, sir.

8 Q. You also supervise patrol officers?

9 A. Yes.

10 Q. So back on December 18th of 2009, would Josh

11 Worthy have been one of the officers that you

12 supervised?

13 A. Yes.

14 Q. How about Valentich?

15 A. Yes.

16 Q. He was a sergeant at the time; is that right?

17 A. Correct.

18 Q. Okay. So were you on duty in the early morning

19 hours, the late evening hours of December 17th and early

20 morning hours of December 18th of 2009?

21 A. Yes, sir.

22 Q. And where were you during that time?

23 A. The morning of the 18th?

24 Q. Of the 18th.

25 A. Currently, I was at home, and --

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1 Q. I guess -- do you keep fairly normal business

2 hours like 9:00 to 5:00, 8:00 to 5:00, something like

3 that?

4 A. Yes, sir, generally Monday through Friday.

5 Q. Okay. So around midnight on that -- on that

6 night, you were home asleep, I take it?

7 A. Yes, sir.

8 Q. Did you receive a call that evening --

9 A. Yes, sir.

10 Q. -- telephone call?

11 And what was the nature of that call?

12 A. It was in reference to a fire at a house.

13 Q. Would you pull the microphone a little bit

14 closer to you, please?

15 A. Is that better?

16 Q. Yes, it is.

17 A. Okay.

18 Q. Okay. So the nature of the call was?

19 A. It was in reference to a house fire.

20 Q. Did you learn where that house fire was?

21 A. Yes.

22 Q. And where was it?

23 A. 600 Little School Road.

24 Q. Was that within the city limits of Kennedale,

25 Texas?

1 A. Yes.

2 Q. At that time did you do any -- anything in
3 response to the telephone call you received?

A. No, sir.

Q. Did you receive a -- a second call?

6 A. Yes.

7 Q. And what was that second call in reference to?

8 A. It was also in reference to a house fire, the
9 same one that had a deceased body inside.

10 Q. Okay. And did that require some action on your
11 part?

12 A. Yes.

13 Q. What did you do?

14 A. At that point I contacted the chief of police.
15 I let him know the situation with the house fire.

16 Q. Did you proceed to the scene at that time, or
17 was it later -- at a later time you proceeded to the
18 scene?

19 A. At that point I got out and started getting
20 ready to go in.

21 Q. Okay. So where were you living at the time?

22 A. Weatherford.

23 Q. So did it take you a little bit of time to get
24 from Weatherford down to Kennedale?

25 A. Yes.

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1 Q. Did anything else happen while you were en
2 route from Weatherford to Kennedale?

3 A. Yes. I received a text message.

4 Q. And what did the text message say?

5 A. In reference to we had a second deceased person
6 inside the house.

7 Q. Who was it that sent you that second -- that --
8 that text message you received en route?

9 A. Detective Jason Charbonnet.

10 Q. So I take it you -- that didn't change your
11 itinerary. You're still on your way to 600 Little
12 School Road?

13 A. That's correct.

14 Q. And what was your purpose for going there that
15 day?

16 A. Just on traffic control or any assistance I
17 could be to patrol or the fire department.

18 Q. I guess you eventually arrive at the location?

19 A. Yes.

20 Q. Just generally, what did you observe when you
21 arrived there?

22 A. Once I got there, I observed smoke coming from
23 the windows, doors.

24 Q. Do you recall approximately what time you
25 arrived?

1 A. 2:18 a.m.

2 Q. Were there other police department personnel on
3 the scene?

4 A. As far as police, it was just Kennedale at the
5 time.

6 Q. Okay. Who was there from your department?

7 A. Josh Worthy, Officer Josh Worthy, and Sergeant
8 Valentich.

9 Q. Was Detective Charbonnet there also?

10 A. Yes, sir.

11 Q. And I take it the fire department were still on
12 the scene?

13 A. Yes.

14 Q. And upon your arrival, did you contact anyone?

15 A. Yes. I went to Detective Charbonnet and
16 Sergeant Carlson.

17 Q. And did you receive a briefing from them about
18 what they had located and -- and what was going on
19 there?

20 A. Yes, sir.

21 Q. And then what did you proceed to do?

22 A. Once again, I just would help with the traffic
23 control, see if the officers needed anything, just being
24 assistance.

25 Q. At the time you had the conversation with --

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1 with Sergeant Carlson and Detective Charbonnet there at
2 the scene, had the house been cleared for entry by the
3 police department yet?

4 A. No.

5 Q. Why was that?

6 A. Still fire suppression taking place, fire
7 personnel still working the fire.

8 Q. So you began working with -- with your -- your
9 department's officers and traffic control?

10 A. Yes.

11 Q. Okay. Pretty cool out that evening?

12 A. Yes, sir.

13 Q. Okay. After you did that for a period of time,
14 what happened next?

15 A. At that point, you know, they didn't need any
16 assistance. The traffic was somewhat slow. I went back
17 to the police department.

18 Q. And what were you preparing to do?

19 A. At the time I was getting prepared to go back
20 home.

21 Q. While you were at the police department, did
22 anything else happen?

23 A. Yes. I was contacted by Communications to --
24 Detective Charbonnet needed me to come back to the
25 scene.

1 Q. So did you go back to the scene?
 2 A. Yes.
 3 Q. And did you contact Detective Charbonnet when
 you arrived back there?

4 A. Yes.

5 Q. And after you contacted Detective Charbonnet,
 6 what did you do?

7 A. He -- he told me that one of the residents of
 8 the home showed up and he was in the parking lot at the
 9 church.

10 Q. And did you go to that location?

11 A. Yes.

12 Q. And when you arrived at the location --
 13 where -- where exactly did you go?

14 A. I went from the police department to the church
 15 was right across the street west of the house, 601
 16 Little School Road.

17 Q. And did you observe anyone when you arrived
 18 over there?

19 A. Yes. I observed Officer Worthy and John
 20 Hummel.

21 Q. Officer Josh Worthy?

22 A. Yes.

23 Q. And was he in uniform that evening?

24 A. Yes.

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1 Q. And you also observed someone else?

2 A. Yes.

3 Q. Who would that be?

4 A. John Hummel.

5 Q. And what was Mr. Hummel doing at the time?

6 A. He was sitting in his van. The door was open
 7 with his legs and feet dangling outside.

8 Q. And you said you contacted John Hummel at that
 9 point. Do you see that individual in the courtroom
 10 today?

11 A. Yes, sir.

12 Q. Would you point him out today and describe what
 13 he's wearing in the courtroom?

14 A. To my right, wearing a suit and tie, a tan
 15 color gray pants, white socks.

16 Q. Is he the last individual at the table over
 17 here to my left?

18 A. Yes.

19 MR. GILL: Can the record reflect he's
 20 identified the Defendant?

THE COURT: The record will so reflect.

21 Q. (BY MR. GILL) Can you describe what Mr. Hummel
 22 was doing at the time?

23 A. At the time he was just talking to Officer
 24 Worthy.

1 Q. How -- approximately how far apart were he and
 2 Officer Worthy at that point?

3 A. About four or five feet.

4 Q. Did you make contact with Mr. Hummel?

5 A. Yes.

6 Q. And how did you do that?

7 A. I approached him while he was sitting in his
 8 vehicle.

9 Q. And did you introduce yourself or -- or how did
 10 you -- how did you go about it?

11 A. Once -- once I headed up there, I introduced
 12 myself as Captain Hull, and see if he needed any
 13 assistance, if he needed anything. I asked him if he
 14 was the resident of the house, and he indicated yes.

15 Q. Did you ask him anything else?

16 A. At that point, no.

17 Q. What was your purpose for talking to him at
 18 that point?

19 A. I was advised that he was a resident of the
 20 house, and I asked him if he needed anything, if
 21 everything was okay, if he wanted any assistance at all,
 22 that I would help him.

23 Q. What type of assistance did you offer him?

24 A. A place to get out of the weather, if he needed
 25 something to drink, anything to help him with the

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1 situation that was taking place.

2 Q. After you made those offers to him, what
 3 happened next?

4 A. He -- he indicated that he would go down to the
 5 police station to get out of the weather and go from
 6 that point.

7 Q. Okay. Now, also, were the detectives
 8 interested in talking to Mr. Hummel?

9 A. Yes.

10 Q. What would the detectives be interested in
 11 talking to Mr. Hummel about?

12 A. One is wanting to understand -- see what took
 13 place with the house. At the point we believed that he
 14 was the last one that left the residence in reference to
 15 the fire.

16 Q. So were -- were officers trying to ascertain
 17 who was -- who was remaining in the house when he left?

18 A. Yes.

19 Q. And what -- what condition the house was in?

20 A. Yes.

21 Q. And what was going on at the house?

22 A. That's correct.

23 Q. So he was being asked to come down to the
 24 police station to help them with those -- with those
 25 points; is that correct?

1 A. That's correct.

2 Q. Did you have a further conversation with the
3 detectives?

A. Yes.

Q. And what did they advise you?

6 A. They asked me to take him back to the police
7 station and help see if he needed anything and also see
8 if I can get a statement started.

9 Q. And did you take steps to get Mr. Hummel back
10 to the police station?

11 A. Yes, I did.

12 Q. What did you do?

13 A. I went -- walked back to him, and I asked him
14 if he was -- if he wanted to go to the police station,
15 get out of the weather, anything like that. At that
16 point he said, yes, he didn't have any problem with it.
17 At that point he jumps out of his vehicle and starts
18 walking with me towards my vehicle or to a patrol unit.

19 At that point I let him know that he -- he
20 was more than welcome to take his own vehicle so he
21 could leave at any time he wanted to.

22 Q. So if he -- if he went down there with you, he
23 wouldn't necessarily be -- be able to leave whenever he
24 wanted to?

25 A. That's correct.

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1 Q. But if he had his own vehicle there, then he'd
2 be able to leave when he chose?

3 A. Yes.

4 Q. So how did he get back to the Kennedale police
5 station?

6 A. He drove his minivan to that location.

7 Q. How did he know where to go?

8 A. He followed me there.

9 Q. And approximately how far is it from his
10 address on Little School Road down to the Kennedale
11 police station?

12 A. Roughly about two miles.

13 Q. How do you get there from Little School Road?

14 A. You'll take Sublett Road to Kennedale Parkway
15 to Third Street. Once you go down Third Street, the
16 police department is on the right side.

17 Q. Is -- is Sublett Road the east/west road that
18 runs directly into the home there on -- at 600 Little
19 School Road?

A. That's correct.

Q. So you drove down to the police station; Mr.
22 Hummel followed you?

23 A. Yes.

24 Q. What happened when you arrived at the police
25 station?

1 A. We parked -- we parked in front of the -- in
2 the general parking. I parked in the police parking,
3 and I approached him there in the parking lot to bring
4 him inside the police station.

5 Q. Was the PD a pretty quiet place at that time of
6 the morning?

7 A. Yes.

8 Q. Approximately what time of the morning was it?

9 A. It was roughly about 5:18, 5:30.

10 Q. Was there -- who was -- who all is in the
11 police department that hour of the morning?

12 A. At that time it's just the communications
13 officer, the dispatcher.

14 Q. One person?

15 A. Yes.

16 Q. So did you take Mr. Hummel inside the Kennedale
17 police station?

18 A. Yes, I did.

19 Q. And where did y'all go once you got inside the
20 police station?

21 A. Once we got inside, we went to the interview
22 room.

23 Q. Where within the police department is that
24 located?

25 A. Once you walk in through the front door, the

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1 interview room is the second door on the right, roughly
2 about 15 feet inside the building.

3 Q. When you enter the front door of the Kennedale
4 Police Department, what do you -- what do you walk into
5 at that point?

6 A. You walk into the general lobby. From that
7 point, there's a secured door with a punch combination
8 door lock.

9 Q. So did you go through that controlled access
10 door back to the interview room?

11 A. Yes.

12 Q. So the interview room is located in a secure
13 area of the police department?

14 A. That's correct.

15 Q. And once you and Mr. Hummel got back to that
16 interview room, what happened?

17 A. He asked if he could go to the restroom.

18 Q. Is there a restroom inside the police
19 department that people are allowed to use?

20 A. Yes, sir.

21 Q. And where in relation to the interview room is
22 it?

23 A. It's to the south from where we were. We had
24 to go down a hallway and take a right past several
25 offices -- offices on the way, and the restroom's on the

1 right side of the hall.

2 Q. Okay. And did you just allow Mr. Hummel to go
3 down there, or did you go with him?

A. No, I walked down with him.

Q. And why did you do that?

6 A. The offices that are there, just the records
7 clerk, communications there -- right there at the
8 interview room. Detectives offices are there. There's
9 three of those. At that point the restroom is the next
10 office.

11 Q. So he was -- at that point he's back in the
12 secure area?

13 A. That's correct.

14 Q. And you needed to take steps to make sure that
15 that secure area stayed secured?

16 A. That's correct.

17 Q. Okay. So he was allowed to use the restroom
18 back there?

19 A. Yes.

20 Q. Then after the restroom break, what happened
21 next?

22 A. I walked him back to the interview room.

23 Q. Did you seat him in the interview room?

24 A. Yes.

25 Q. Did you have a conversation at that point?

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1 A. Yes.

2 Q. What was the conversation about?

3 A. I asked if he could make a statement basically
4 what took place when he left the house that night.

5 Q. Okay. What did he say about that?

6 A. He said, yes, he didn't have any problem with
7 it.

8 Q. Okay. Did he have to bring his own paper? Did
9 you provide him something? How did that work?

10 A. I offered -- we have a witness statement that
11 we ask that they fill out and put the information on
12 that piece of paper.

13 Q. Okay. Did you give him one of those forms?

14 A. Yes, I did.

15 Q. Did you give him something to write with?

16 A. Yes, I did.

17 Q. Did he sit down and begin writing?

18 A. Yes, sir.

19 Q. Did you tell him what to write?

20 A. No.

21 Q. What -- what were you doing while he was
22 writing that statement?

23 A. I walked out of the interview room, and I went
24 into where the recording of the video takes place.

25 Q. And why did you go there?

1 A. I wanted to just give him some time alone,
2 under the circumstances, just give him a chance to rest
3 and gather his thoughts of what's taken place.

4 Q. Did you work with any equipment while you were
5 back in that recording room?

6 A. Yes. I just viewed the interview from that
7 location where the TV and the VHS recorder is.

8 Q. Did you begin recording what was going on in
9 the interview room?

10 A. Yes, I did.

11 Q. Why did you do that?

12 A. Just standard practice for us to video any type
13 of interviews or witness statements, suspects,
14 dependents, anything of that nature.

15 Q. So how was Mr. Hummel dressed generally that
16 morning?

17 A. Just in casual clothes, pants, shirt, hat.

18 Q. Do you remember what color clothing he had on?

19 A. It's black.

20 Q. So if we see a recording of what went on in
21 that interview room, he'd be an individual in basically
22 black clothing with a hat on?

23 A. That's correct.

24 Q. Have you seen a -- a recording of Mr. Hummel in
25 that witness room?

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1 A. Yes.

2 Q. Okay. Is that how he appears?

3 A. Yes.

4 Q. At the beginning of the recording, do you also
5 appear on the -- on the -- on the video?

6 A. Yes, I do.

7 Q. How were you dressed that morning?

8 A. Black shirt with "police" on the front and
9 back, blue jeans and tennis shoes.

10 Q. Do you remember if that was a long-sleeve or a
11 short-sleeve shirt?

12 A. I believe it was a short-sleeve shirt.

13 Q. Okay. So did Mr. Hummel write his statement
14 for a period of time?

15 A. Yes, he did.

16 Q. And while he was writing that, did anyone else
17 arrive at the PD?

18 A. Sergeant Carlson and Detective Charbonnet and
19 ATF Steele.

20 Q. Okay. Agent Steele from ATF was with them at
21 this point?

22 A. Yes, sir.

23 Q. And was the -- was the purpose for someone
24 other than you to actually interview Mr. Hummel?

25 A. Yes, that's correct.

1 Q. And who was going to interview Mr. Hummel?
 2 A. Detective Charbonnet.
 3 Q. And so who ended up interviewing Mr. Hummel?
 4 A. Detective Charbonnet and Sergeant Carlson, I
 5 believe.

6 Q. Did Detective -- or Investigator Steele --
 7 Agent Steele also interview Mr. Hummel that morning?

8 A. Yes.

9 Q. Now, at some period of time, did you -- did you
 10 enter back into that room and retrieve the statement
 11 that Mr. Hummel had written out for you?

12 A. Yes, I did.

13 Q. And did Mr. Hummel sign that statement?

14 A. Yes.

15 Q. Did you preserve that statement?

16 A. Yes.

17 Q. Let me show you what's been marked as State's
 18 Exhibit No. 342 and ask if you recognize State's Exhibit
 19 342.

20 A. Yes, I do.

21 Q. And is that the witness statement that Mr.
 22 Hummel gave to you on December 18th of 2009?

23 A. Yes, sir.

24 Q. Okay. Up to the point where he gave that
 25 statement, did he ever ask you to -- ask for an

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1 attorney?

2 A. No, sir.

3 Q. Did he ever ask to terminate the interview?

4 A. No, sir.

5 Q. Did he ever tell you he didn't want to talk to
 6 you?

7 A. No.

8 Q. Did he voluntarily give you that statement,
 9 which has been marked as State's Exhibit 342?

10 A. That's correct.

11 MR. GILL: Your Honor, at this point we
 12 offer State's 342.

13 MR. CUMMINGS: Your Honor, I renew the
 14 objections that we have already posed to this document.
 15 Beyond that -- those are the objections I have today as
 16 well.

17 THE COURT: All right. Your objection
 18 continues to be overruled. State's Exhibit 342 is
 19 admitted.

20 (State's Exhibit No. 342 admitted)

21 Q. (BY MR. GILL) Captain Hull, would you mind
 22 reading State's Exhibit 342 for the jury, please?

23 A. Yes, sir.

24 I left my home --

25 Q. Start at the very top, please.

1 A. Okay. Kennedale Police Department witness
 2 statement. It has the Kennedale Police Department
 3 badge -- I'm sorry, patch, the Kennedale -- City of
 4 Kennedale logo. Has a Case No. 0900017546, has driver's
 5 license number, which is blank. It says please print,
 6 date 12/18/2009, name, John Hummel, DOB, which stands
 7 for date of birth, 11/04/1975, POB, which is place of
 8 birth, Arlington, Texas. Home address, 600 Little
 9 School Road, Kennedale, Texas 76060. Cell phone,
 10 (817) 770-1823. It also asks for a work address, which
 11 is there's no response; a phone number, which is no
 12 response; pager, no response; permanent relative, no
 13 response; the address, no response; home phone, no
 14 response; work phone number, no response; the cell
 15 number, no response; a close friend, no response; an
 16 address, no response; home phone, no response; work
 17 phone, no response; cell phone, no response.

18 Then statement: "So I left my home around
 19 9:00 p.m. I drove down to Joshua to visit a friend but
 20 was not home. I drove around for awhile to wait and see
 21 if he would come home, but he didn't. I stopped and got
 22 gas, drove around some more. Then I began to visit
 23 Walmarts to price things for Christmas. I came home a
 24 little after 5:00 a.m. and found it burned down, and
 25 firemen and police were still there."

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1 Below that, there's one, two, three, four,
 2 five, six, seven, eight, nine, ten lines for further
 3 written statement. There's nothing there.

4 It says, I have read the blank pages to
 5 this statement, and the facts contained here are true
 6 and correct. Statement was started at, which is blank,
 7 and was completed at blank on this date by -- it says
 8 CAPT. D. Hull. It has my -- my written initials by it,
 9 D.H."

10 It says, witness my hand the blank day of
 11 blank 20 blank. Witnesses, John Hummel's signature,
 12 then there's another signature off the side of that,
 13 which was not signed, and right below the signature of
 14 John Hummel is John Hummel as printed, and on the other
 15 side on the affidavit it says signature and printed
 16 name, which is blank.

17 Right underneath those lines is my
 18 signature, Darrell Hull 12/18/09.

19 Q. And so other -- other than where you have
 20 signed that witness statement form and where your name
 21 has been written out and where the case number appears
 22 at the top, is all the rest of the handwriting on that
 23 document John Hummel's handwriting?

24 A. That's correct.

25 Q. And did he voluntarily give that statement to

1 you on December 18th of 2009?

2 A. Yes, sir.

3 Q. At the time he gave that statement, was he
under arrest?

4 A. No, sir.

5 Q. Was he being detained by the Kennedale Police
6 Department?

7 A. No, sir.

8 Q. You were treating Mr. Hummel as a -- as a
9 witness to the case; is that right?

10 A. That's correct.

11 Q. After your role in the interview with Mr.
12 Hummel had been completed, did you head back to the
13 scene at 600 Little School Road?

14 A. Yes, I did.

15 Q. What was your purpose for heading back out
16 there?

17 A. Going there to assist the patrol officers or
18 any of the fire personnel that needed any assistance
19 with the traffic, parking, pedestrian, any -- any
20 assistance I can offer.

21 MR. GILL: We'll pass the witness, Your
22 Honor.

23 THE COURT: Cross-examination?

24 MR. CUMMINGS: Thank you, Judge.

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CROSS-EXAMINATION

1 BY MR. CUMMINGS:

2 Q. Captain, good afternoon.

3 A. Good afternoon.

4 Q. How big an agency is Kennedale?

5 A. We have 19 sworn officers.

6 Q. And you've mentioned there's a chief. Is there
7 anybody between you in the chain of command and the
8 chief?

9 A. No, sir.

10 Q. So you're second in command at the Kennedale
11 Police Department?

12 A. That's correct.

13 Q. Is there another captain?

14 A. No.

15 Q. So as far as chain of command goes, whenever
16 the officers who are on the scene determine that there
17 was a possible homicide, or at least a deceased person,
18 they -- I guess there's a policy or procedure in place
19 to contact you?

20 A. That's correct.

21 Q. Okay. And then, of course, when you decide it
22 was serious enough, you contacted your chief, correct?

23 A. That's correct.

24 Q. You -- when you go to the scene, did you take

1 over the investigation?

2 A. No, sir.

3 Q. Okay. So how does that work? I mean, you
4 obviously outrank Sergeant Carlson and Detective
5 Charbonnet. They were on the scene, along with Officer
6 Worthy. So can you explain that to the jury, how
7 that -- the responsibilities on the scene of this case?

8 A. Well, at the time it was a fire taking place.

9 It really didn't interfere with any of the police
10 activity. We were there generally just helping with the
11 traffic. The fire apparatuses were parked in the middle
12 of the road; therefore, we had to direct traffic to go
13 around it.

14 Q. How -- as far as policy's concerned, does
15 Carlson work for you?

16 A. Yes.

17 Q. And Charbonnet works for you?

18 A. Indirectly, but, yes.

19 Q. I -- I don't understand indirectly. Can you
20 explain that?

21 A. Well, I'll receive the Criminal Investigation
22 Division, but Sergeant -- Sergeant Carlson also assists
23 with that. He does all the -- my assignments.

24 Q. So chain-of-command wise, Carlson's between you
25 and Charbonnet?

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1 A. That's correct.

2 Q. But Charbonnet indirectly reports on the chain?

3 A. Yes.

4 Q. Okay. But you let Carlson continue to
5 supervise the investigation with Charbonnet after you
6 arrived on the scene; is that correct?

7 A. That's correct.

8 Q. Okay. But you're called upon to go back to the
9 scene. You leave at 5:00ish in the morning, hoping to
10 go back home, and one of them calls you back to 600
11 Little School Road, right?

12 A. That's correct.

13 Q. Why was that?

14 A. Detective Charbonnet indicated that we had a
15 resident of the house show back up, and it was in the
16 parking lot of the church.

17 Q. Up to this point, though, you been indirectly
18 overseeing what was going on, but handling traffic and
19 things like that. Charbonnet and Carlson are already on
20 the scene. Why didn't one of them handle it?

21 A. They're in the -- it was in the process of
22 helping the fire department with the fire.

23 Q. Okay. Whenever you went back to the scene, did
24 you visit with Charbonnet or Carlson prior to contacting
25 John Hummel?

1 A. No.

2 Q. Whenever you went back to the scene, did you
3 have communication with Worthy by phone or directly once
4 you arrived?

5 A. Once I arrived, yes, my -- verbally, face to
6 face.

7 Q. When you received word to go back to the scene,
8 did you get that through dispatch, or did you speak
9 directly by cell phone or otherwise to --

10 A. It -- it was through dispatch.

11 Q. Okay. At the time that you approached John
12 Hummel, had you already decided that he was at least a
13 person of interest?

14 A. No, not at that time.

15 Q. Okay. The -- when you first approached John
16 Hummel, he had already been visiting with or conversing
17 with Officer Worthy for awhile, had he not?

18 A. I believe so.

19 Q. At that point did you-all have any idea --
20 strike that.

21 At that point were you at all suspicious
22 that -- of his demeanor or things he had to say?

23 A. In reference to what? I'm not sure if I
24 understood your question.

25 Q. Well, I'm trying to get a feel for when it was

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1 that you -- you obviously felt you needed to interview
2 him, right?

3 A. Yes.

4 Q. And at some point, I believe, according to your
5 report, you felt that he was not quite emotionally
6 correct in the way he was conducting himself; isn't that
7 correct?

8 A. That's correct. He was a witness.

9 Q. Okay. And your immediate observations in your
10 report indicates that he was -- just didn't seem like he
11 was acting appropriately as far as his emotion or what
12 he was conducting himself; is that fair?

13 A. That's fair.

14 Q. So before you ever leave the scene, you've got
15 suspicions, correct?

16 A. Yes.

17 Q. Okay. Now, you transport him or -- or you-all
18 have agreed that you're going to take him back to the
19 police station to visit with him to take a statement
20 from him or to talk to him, correct?

21 A. Yes, we gave him that option.

22 Q. Okay. Now, you made sure that he went in his
23 own vehicle, correct?

24 A. I gave him that option.

25 Q. Okay. It was kind of important that he do

1 that, isn't it?

2 A. If he wanted to leave at any time, he was
3 willing to do so, so he had his own vehicle.

4 Q. Okay. But aren't you trained that it is better
5 to talk to somebody, even a person of interest or a
6 suspect, and allow them the opportunity to leave so
7 they're not in custody?

8 A. Well, at the same time, it's also a victim of
9 his house burning down, so it was also given that
10 option.

11 Q. You weren't sure just where he fell -- what
12 category he fell in?

13 A. No, sir.

14 Q. Okay. You -- you go back to your police
15 department, which is only, you say, five minutes away,
16 something like that?

17 A. Roughly.

18 Q. And I believe you said it was somewhere between
19 5:18 and 5:30 in the morning?

20 A. Yes, sir.

21 Q. There's a small lobby at your department, and
22 then you have to go through your locked door, and from
23 that point on, it's police department personnel only
24 unless that individual is accompanied by a police
25 department person, right?

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1 A. That's correct.

2 Q. Immediately, John says he needs to use the
3 restroom, right?

4 A. That's correct.

5 Q. Okay. And at this point it's just you and the
6 dispatcher there? No one else is there yet?

7 A. That's correct.

8 Q. Did he explain to you that he frequently has to
9 use the restroom?

10 A. Yes.

11 Q. Okay. So you took him back and allowed him to
12 use the facility within your secure area of your
13 department.

14 Now, you asked him to -- to make a
15 statement, the statement that -- that you read to the
16 jury correct?

17 A. That's correct.

18 Q. That is a --

19 MR. CUMMINGS: May I approach, Your Honor?

20 THE COURT: You may.

21 Q. (BY MR. CUMMINGS) This is actually entitled a
22 witness statement; is that right?

23 A. That's correct.

24 Q. So when you have -- you have two statements,
25 two forms, I think you said, right? A witness statement

1 and some sort of a -- I don't know what you would call
2 the other one, but something that was pertaining to
3 someone that was in custody, a suspect, right?

A. That's correct.

Q. That particular form is designed to elicit
6 information from someone who may have observed a crime
7 or -- or be some sort of a witness to an offense,
8 correct?

A. Yes.

Q. The -- when you gave John that form, did you
11 give him any guidance or instructions as to how to fill
12 it out?

A. I just indicated to him if he would just start
14 from the beginning, then to the point he left the house
15 so we can gather information of possibly how the -- the
16 fire took place.

Q. Did he indicate to you that he really wasn't
18 comfortable writing because he has difficulty in
19 communicating in writing, spelling, things like that?

A. I believe so.

Q. Okay. He actually asked you for some
22 assistance, and you gave him some spelling or stuff like
23 that; is that right?

A. That's correct.

Q. Did you tell him that you needed to have the

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1 information on the top of that form where all those
2 empty spaces are?

A. I'm sorry?

Q. Did you specifically tell him to make sure he
5 filled in all the blanks?

A. I believe so.

Q. Okay. Would we see that on video?

A. I'm not sure.

Q. Now, when you first give -- in fairness, you
10 gave him that form before you ever go back to your
11 recording room and flipped a switch to start recording,
12 correct?

A. I believe.

Q. Okay. So you hand him the form. Whatever you
15 said to him there is not going to be preserved on the
16 tape, but -- and you believe you told him to go ahead
17 and fill in the blanks, right?

A. Uh-huh.

Q. Okay.

A. That's correct.

Q. The -- all of the writing, except for your
22 signature on that form, is Mr. Hummel's?

A. Yes, except at the -- I guess three quarters
24 down the page where it says, Captain D. Hull.

Q. Okay. Is that -- is that -- is that your

1 signature, or did you write that out and then put your
2 initials beside it?

A. No, someone else spelled that out.

Q. That's not your writing at all?

A. With the -- next to my initials, no.

Q. Okay. All the way to the bottom, is that your
7 signature?

A. Yes, that is.

Q. Okay. So the only place on this form that you
10 actually inscribe anything was your signature and the
11 date 12-18-09?

A. That's correct.

Q. At the very bottom?

A. Yes.

Q. When you gave him the form, you say you went to
16 the recording room. Where is that located?

A. If you're in the interview room, you'll take a
18 right and you take another right, and the door to the
19 interview -- or the recording's right next to the
20 interview room.

Q. Okay. Is the camera in the interview room
22 obvious to the person and to a civilian who's in the
23 room?

A. No.

Q. How is the camera mounted in that room?

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A. It's mounted in the center of the room, as if
2 it's a alarm motion detector.

Q. So it's designed to be undetectable, if that's
4 a word? I believe that's a word. Undetectable.

A. Yes.

Q. There's a microphone in the room as well?

A. That's correct.

Q. Where is it mounted?

A. It's on the ceiling.

Q. So it's not an obvious mic on the table or
11 anything like that. It's --

A. No.

Q. -- designed not to be obvious.

When you -- when you are able to go to the
15 recording room, is there equipment that would enable you
16 to observe what's going on in the interview room, even
17 if you haven't got the recording going?

A. That's correct.

Q. Okay. How long after you went to the recording
20 room did you decide, I'm going to go ahead and record
21 and actually start recording?

A. At the recording as soon as I went out.

Q. So that was your intent when you went back
24 there, was to go ahead and -- and capture what was going
25 on in that room with the recording?

1 A. Yes.

2 Q. Okay. When you -- when you returned to the
3 interview room, how long a time was there between you
starting that recording and your return to the interview
room?

6 A. I don't have a definite time. I'm not sure.

7 Q. Did you identify yourself on the recording as
8 Captain Hull and the date and the time and that sort of
9 thing?

10 A. I believe I identified myself. I'm not sure
11 about the date or the time.

12 Q. Charbonnet, Steele joined you shortly after you
13 been -- I'm sorry. Let me restate this.

14 Detective Charbonnet and Agent Steele
15 joined you at some point in time after you already
16 started this process; is that right?

17 A. That's correct.

18 Q. And was it your intent or the plan for that to
19 take place, that they would join and take over in
20 talking to Mr. Hummel after they arrived?

21 A. That's correct.

22 Q. Do you have any idea who put your name at the
23 bottom of this form that's been introduced as 342, I
24 think, the form that's there before you?

25 A. Yes, the printed part.

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1 Q. Yeah, the one that the State just offered.

2 A. Yes, it's Sergeant Carlson, I believe.

3 Q. Okay. Did he somehow -- this is State's
4 Exhibit 342. Do you need it?

5 A. No, go ahead.

6 Q. Okay. Did -- is there some way that he signed
7 or something like that that indicates to you it was
8 Carlson that approached Charbonnet or somebody else?

9 A. I believe Sergeant Carlson is the one that
10 approached me about it.

11 Q. Did John Hummel sign this in your presence?

12 A. No.

13 Q. John Hummel actually signed as a witness, as
14 opposed to being the affiant, correct?

15 A. That's correct.

16 Q. Is the -- normally, this form is signed in the
17 affiant location by the individual's filled out form and
18 witnessed by an officer, correct?

19 A. That's correct.

20 Q. John signed it in the wrong spot; is that
right?

22 A. I believe so.

23 Q. You said there was another kind of form that
24 you used for suspects. That form has to comply with the
25 Code of Criminal Procedure, does it not?

1 A. I think so.

2 Q. Okay. That form has Constitutional rights
3 actually set out on the form that -- so that the
4 individuals filling out that statement understands that
5 they do have those sorts of rights, correct?

6 A. That's correct.

7 Q. But if you don't take somebody in custody, you
8 make sure they bring their own vehicle, then that form
9 doesn't kick in or trigger according to the law; is that
10 right?

11 A. That's correct.

12 Q. Did you remain and observe the interview that
13 was conducted by Agent Steele and Detective Charbonnet
14 and ultimately by Sergeant Carlson the rest of that
15 morning?

16 A. No, I did not.

17 Q. You returned to the scene and assisted further
18 out there. How soon was it that you left and went back
19 to 600 Little School Road?

20 A. Probably 15, 20 minutes, maybe longer than
21 that. I'm not exactly sure on the time.

22 Q. When you returned to the police station, was
23 John Hummel already gone?

24 A. No, he was there.

25 Q. Did you observe him depart or have any other

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1 contact with him?

2 A. I did not have any further contact with him.

3 Q. Thank you, Captain.

4 MR. CUMMINGS: I'll pass the witness, Your
5 Honor.

6 THE COURT: Redirect?

7 MR. GILL: We have no further questions,
8 Your Honor. May he be excused?

9 THE COURT: Any objection?

10 MR. CUMMINGS: No objection, Your Honor;
11 however, he -- we definitely want him subject to the
12 Rule.

13 THE COURT: All right. Captain, you're
14 still subject to recall. Do not discuss your testimony
15 with anybody except for the attorneys involved. You may
16 step down, sir.

17 (Witness retires)

18 THE COURT: State, call your next witness.

19 MR. BRISSETTE: Judge, we'll call Special
20 Agent Steve Steele, but we need to move him and a
21 container he has with him upstairs. If I can have five
22 minutes, I can get him here.

23 THE COURT: All right. We'll take a break.

24 Ladies and gentlemen, members of the jury,
25 please excuse yourself to the jury room. We'll be in

1 brief recess. Thank you.

2 (Recess from 2:27 p.m. to 2:49 p.m.)

3 (Open court, Defendant present, no jury)

THE COURT: Both sides ready to proceed?

MR. BRISSETTE: Yes, Your Honor.

MR. CUMMINGS: Yes, Your Honor.

THE COURT: All right. Let's bring in the jury.

(Jury present)

THE COURT: Please be seated.

State, call your next witness.

MR. BRISSETTE: The State calls Special Agent Steve Steele.

THE COURT: Agent Steele, please raise your right hand.

(Witness sworn)

THE COURT: Please be seated.

State, you may proceed when you're ready.

STEVEN STEELE,
having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRISSETTE:

Q. Good afternoon, Agent Steele. How are you, sir?

A. Good. How are you?

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Q. Doing well.

Can you tell the members of the jury a little bit about yourself? Did you go to college anywhere here in the Metroplex?

A. Yes, sir. I graduated from UTA with a bachelor of science in criminal justice.

Q. And from there, where did you go?

A. Actually during that time period, I was working for the Arlington Police Department. I worked in patrol, narcotics, CID for about seven and a half years.

I left there and went to work for the Dallas County District Attorney's Office as a special investigator for approximately four years, which is actually when I finished my college.

And then in 1986, I went to work for the United States Customs Service in Brownsville, Texas working drug interdiction.

Q. Did you have an occasion after the -- that stint with that federal agency to join another federal agency?

A. Yes. I was with Customs about ten months and transferred laterally to the Bureau of Alcohol, Tobacco and Firearms in October of 1987, and I've been with ATF since then.

Q. When you transferred to them, they were part of

the Department of Treasury, and now with the realignment post 9/11, you're under the Justice Department, are you not?

A. Yes, that's correct.

Q. To be an ATF agent or a special agent with the ATF, what type of background and training do you have to have to hold that title?

A. We go through a pretty long series of -- of schools. Actually, in -- in my first year and a half with the Treasury Department with Customs and ATF, I went through approximately six months of training in Glynco, Georgia, including specialized training in explosives and -- and arson investigation.

Q. In addition to your initial training at Glynco, you've had other specialized training throughout the United States, have you not?

A. Yes. I had -- I've had specific training. Starting in 1998, I went into the certified fire investigator program, and that was a two-year training program -- with -- within ATF where I learned fire signs, basically, learned to do origin and cause investigations. That included a large number of schools, some back at -- at the federal law enforcement training site in Glynco, Georgia, and some at the University of Maryland, but specifically, I did the --

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the Maryland Fire Research Institute for -- for a two-week period for an enclosure fire school.

I went to the National Fire Academy for origin and cause school. Went back to Glynco for a -- an advanced origin and cause and courtroom technique school, and then additionally did a hundred -- at least 100 fires, origin-cause scenes during that two-year period to -- to gain my certification.

Q. In those hundred and -- hundred or more origin-and-cause scenes, that's something you're doing field work on; is that correct?

A. Yes, hands on.

Q. Responding to what would be known as a hot scene or an active fire investigation scene and some that have already been put out and people have left where you go back to work them after the fact; is that correct?

A. Yes, sir, that's correct.

Q. And have you received your certification as a certified fire investigator?

A. Yes. I received that in 2000.

Q. You mentioned a minute ago that Maryland Fire Research Institute, you took an 80-hour class there for fire phenomenon and enclosure fires. What was that school about? What does that mean?

1 A. It was two weeks of basically learning fire
2 dynamics, learning what certain type fires would do,
3 pool fires, flame heights, when you can look at a -- a
4 damage in a specific fire scene and -- and make some
5 determinations about the fuel load and things of that
6 sort.

7 We got into a lot of fire-dynamics theory,
8 how fire burns, why it burns the way it does, the things
9 that are required to create fire, to -- to stop fire,
10 all -- all types of issues with the fire dynamics.

11 Q. You've also attended -- I believe part of ATF's
12 mission now under the Justice Department is to handle
13 explosives as well; is that correct?

14 A. Yes, sir, that's correct.

15 Q. You attended a Naval explosives, ordnances
16 disposal school? What was that about?

17 A. That was actually working with improvised
18 explosive devices render safe procedures and things of
19 that sort.

20 Q. You're a member of several task forces, are you
21 not, sir?

22 A. Yes, sir, I am.

23 Q. What task force are you currently assigned to?

24 A. I'm currently assigned to the Dallas Division
25 Arson Explosive Task Force. It's -- we work out of

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1 Dallas, and we have members from various other state and
2 local agencies that -- that work with us.

3 I'm also a member of the Tarrant County
4 Arson and Fire Investigators Association. We have a
5 task force, and it was as part of that -- that -- that I
6 got involved in this fire.

7 Q. Does the ATF itself have a task force with what
8 they have national callouts for large fires or large
9 fires involving a number of fatalities?

10 A. Yes, sir. I'm a member of the -- the National
11 Response Team. There are three teams nationwide with
12 about 25 agents assigned to each one, and we travel all
13 over the country and also internationally, occasionally,
14 to work fires and -- and explosives scenes. I've done
15 59 national responses.

16 Q. And through those -- either those -- the work
17 on your 59 national responses, your hundred-plus so
18 fires to receive your CFI certification or other fires,
19 have you had the opportunity to testify as an expert in
20 the field of origin and cause and arson investigation at
21 the state court level in Texas?

22 A. Yes, sir, I have.

23 Q. Have you had the opportunity to testify as an
24 expert in those fields at the federal level?

25 A. Yes, sir, I have.

1 Q. On the early morning hours of December 18th,
2 2009, did you have an occasion to receive a phone call
3 at home from Deputy Fire Marshal Larry Ingram?

4 A. Yes, sir, I did.

5 Q. And without going into the specifics of the
6 call, did you travel somewhere?

7 A. Yes, I did.

8 Q. Where was that?

9 A. I traveled to 600 Little School Road in -- in
10 Kennedale.

11 Q. When you get there as the ATF agent, are you
12 there to have the Feds take control of the scene, or are
13 you there to assist the local fire chief in determining
14 the origin and cause of the fire they've asked you out
15 on?

16 A. We're purely there to assist. We don't have
17 any federal jurisdiction in a -- in a residential fire,
18 but we offer our help and expertise in -- in any fire
19 scene.

20 Q. Did you have an occasion to meet with the --
21 the assets from the Tarrant County Fire Marshall's
22 office along with the Kennedale fire chief there at the
23 scene?

24 A. Yes, sir, I did.

25 Q. And did you take a briefing from them about

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1 what had transpired prior to you arriving?

2 A. Yes, I did.

3 Q. In addition to the briefing, do you go about
4 doing your own initial walk-through on the outside of
5 the structure?

6 A. Yes, sir.

7 Q. Why is that important for you?

8 A. Well, the first part of any fire investigation
9 is to -- to assess the scene, to -- to look at patterns
10 that are on the exterior of the building. Those
11 patterns will tell you quite a bit about where the fire
12 burned, how intensely it burned, things of that sort.
13 So an exterior examination is -- is always top priority
14 in the investigation.

15 Q. If the crime scene log has you there at the
16 fire in the 4:00 o'clock hour, does that sound about
17 right?

18 A. That's -- that's probably when I actually went
19 on to the scene. My recollection is that I got there a
20 little earlier than that, but that would probably be
21 right as far as when I actually entered the scene.

22 Q. And by the "scene," we're talking about the
23 fire police caution tape that's strung around the
24 property when you're there. Do you recall that streamer
25 being up around the area?

1 A. Yes, that's correct.

2 Q. When you actually entered the -- the residence,
3 was it still dark out?

A. Yes.

Q. What was the -- did you walk in there without
6 breathing apparatus, or did you have a mask on of some
7 type?

8 A. I had a half-face, air-purifying respirator.

9 Q. And why did you need that at that time?

10 A. There was still hot spots in the residence. It
11 was still heavy smoke within the residence, and -- and
12 there were still some flare-ups in different areas.

13 Q. While we're talking about hot spots, my
14 understanding is that you were there for an extended
15 period of time that day.

16 A. Yes, that's correct.

17 Q. In fact, the extended period of time goes into,
18 what, in the evening on the 18th?

19 A. Dark, 6:00, 7:00, 8:00 o'clock, something like
20 that.

21 Q. During the day, while we're talking about hot
22 spots, did -- at your instruction, did individuals from
23 firefighting, I guess at Kennedale, use a pro-pack in
24 there to help with some of those hot spots?

25 A. Yes, they did.

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1 Q. And were those hot spots continuing throughout
2 the day?

3 A. Yes.

4 Q. Special Agent Steele, I have on the board here
5 State's Exhibit No. 5. I think a laser pointer is up
6 there on the table, and there's a button on the side of
7 it.

8 If you can take us through your initial
9 walk-around, what you observed on the outside first.

10 A. Initially on the outside the -- starting across
11 this -- the west side, which would have been the front
12 of the residence, I observed that -- that there had been
13 quite a bit of -- of fire actually venting out of the
14 windows on this -- this west southwest corner, which
15 would have been the southwest corner bedroom.

16 There was considerable damage and -- and
17 evidence of fire venting in from this window, which --
18 which actually entered into a dining room, but it was
19 being utilized as a storage. A lot of children's toys
20 and things of that sort.

The fire that -- that was venting out of
22 this window had actually impacted this door, but it was
23 apparent from my examination that this door was closed
24 during -- during the time of the fire and -- and had
25 minimal damage as far as impact from fire.

1 And moving around to this portion, this
2 window, which entered into a living great-room type area
3 den, it was intact, and actually it was the only window
4 across this -- this facing that was intact. I moved to
5 this portion, which was a -- a garage that had been
6 converted.

7 Both of these windows had vented, and there
8 been heavy fire venting from those windows. This door
9 had been forced opened by suppression personnel, and
10 there was heavy fire vented from that area.

11 I moved around to this north side. There
12 was very little evidence of fire here. There were no
13 windows across this facing.

14 There was a window that led into a laundry
15 room. There was some smoke had vented there, but not
16 any -- any heavy fire.

17 No windows across here, just some smoke
18 staying around this window. It was -- it was still
19 intact.

20 I got here. The -- there was a door into
21 the kitchen that was standing open that had obviously
22 been open during the fire.

23 The kitchen window was vented, and the fire
24 had been venting from that window, but that type venting
25 increased as I moved towards the -- the south. There

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1 was a little more damage from -- from venting fire at
2 this window, and this -- this window was totally
3 consumed. All of the aluminum frame was melted and
4 damaged, collapsed.

5 I moved around to the southside. This
6 window is comparable to this window on that southeast
7 corner room. And then as I move further, the -- the
8 window on the southwest bedroom was -- had failed and
9 was vented, but the damage here was not nearly
10 comparable to the damage on these two.

11 So I -- I noticed that these two windows,
12 this area, was my area of greatest damage as far as
13 exterior damage.

14 Q. On the north side of the -- the B side of the
15 structure, did you locate the gas meter?

16 A. Yes.

17 Q. Did it appear to be in good working order with
18 no defects?

19 A. Yes. I didn't notice any defects at all.

20 Q. And on the southside of the structure, I
21 believe there was an external power supply or circuit
22 breaker panel?

23 A. Yes, that's correct.

24 Q. Was it unremarkable as well with the exception
25 of the service line being melted away from the weather

1 head?

2 A. That damage was from fire venting from within
3 the residence. There was no evidence of -- of any fire
originating around that electric service.

Q. Did you have an occasion to -- either at your
6 direction or while you were at the scene throughout the
7 day, to have individuals take photographs of the inside
8 of the scene?

9 A. Yes, sir, I did.

10 Q. And this past weekend I gave you a photo book.
11 Do you recognize the photos that I gave you this weekend
12 to be photos that pertain to this case?

13 A. Yes, sir, I did.

14 MR. BRISSETTE: May I approach, Your Honor?

15 THE COURT: You may.

16 Q. (BY MR. BRISSETTE) Mr. Steele, I'll show you
17 what's been marked as State's 15 and 16. Do you
18 recognize those?

19 A. Yes, I do.

20 Q. I believe the next exhibit should be 23 through
21 31, ask you to take a look at those, see if you
22 recognize those?

23 A. Yes, sir, I do.

24 Q. After 31 in the book should be 33 through 58, I
25 believe.

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1 A. Yes, sir.

2 Q. I believe the next group should be 60 through
3 84.

4 A. Yes, sir, that's correct.

5 Q. All right. I believe the next group, Special
6 Agent Steele, should be 87 through 139. See if you
7 recognize those pertaining to this fire at 600 Little
8 School Road.

9 A. Yes, sir, that's correct.

10 Q. Do you recognize all those photos to be the
11 same that you looked at this past weekend in the same
12 format, just a little bit smaller size, in the book I
13 gave you to review for your testimony; is that correct?

14 A. Yes, that's correct.

15 Q. I'm going to show you what's been marked for
16 identification purposes as State's 143 and 144. Do you
17 recognize those to be pictures that were taken at the
18 scene that day as well?

19 A. Yes, I do.

20 Q. In the book, I believe we have 145 through 153.

21 A. 1 --

22 Q. Through 153?

23 A. 153, yes.

24 Q. And 156, you recognize that?

25 A. Yes.

1 Q. And 160, 161 and 162, you recognize those as

2 well, don't you, sir?

3 A. Yes, sir, I do.

4 Q. And then from 163 through 170, I believe, in
5 the book?

6 A. Yes, sir.

7 Q. Would those photos and the items that are
8 contained inside the photos help you and aid you in your
9 testimony today before the jury to explain your origin
10 and cause identification at 600 Little School Road from
11 the 18th day of December, 2009?

12 A. Yes.

13 Q. Are they a fair and accurate depiction of the
14 events you saw there at Little School Road?

15 A. Yes, sir, they are.

16 MR. BRISSETTE: Your Honor, at this time
17 the State has tendered to Defense Counsel State's 15 and
18 16, 23 through 31, 33 through 58, 60 through 84, 87
19 through 139, 143 through 153, 156, and 160 through 170.
20 Tender to Defense and offer for all purposes.

21 MR. CUMMINGS: Your Honor, it's going to
22 take me a minute.

23 THE COURT: Take your time.

24 (Pause in the proceedings)

25 MR. CUMMINGS: May we approach, Judge?

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1 THE COURT: You may.

2 (BENCH CONFERENCE PROCEEDINGS)

3 THE COURT: Do you have your exhibits with
4 you?

5 MR. CUMMINGS: No, sir. We haven't
6 finished going through them. I wanted to make you aware
7 that some of the photographs are going to be
8 particularly graphic. We're probably going to need
9 to discuss it outside the presence.

10 MR. MOORE: We're going to need some
11 testimony from him about the -- where they were taken
12 and how they were taken and so forth, so...

13 THE COURT: So you want to voir dire the
14 witness?

15 MR. MOORE: Yeah. And we need to do it
16 outside the presence of the jury.

17 THE COURT: All right. Thank you.

18 MR. CUMMINGS: Actually, I'm not ready to
19 voir dire him yet. I want to go through the rest of the
20 photographs, which I'm only about a portion of the way
21 through. I just -- for where we're going, I want to
22 inform you we needed to do that.

23 THE COURT: Do you want to take a break
24 now?

25 MR. MOORE: Yeah, we're going to have to.

1 MR. CUMMINGS: Yeah, if we could --

2 THE COURT: I'm asking if you want to do
3 now.

4 MR. CUMMINGS: Yes.

5 THE COURT: All right.

6 (OPEN COURT PROCEEDINGS)

7 THE COURT: Members of the jury, I need to
8 take a matter up outside your presence. Would you
9 please excuse yourself to the jury room? Thank you.

10 (Jury not present)

11 THE COURT: Please be seated.

12 Mr. Cummings, would you like to take a
13 brief recess so you can go through the documents and get
14 your thoughts together?

15 MR. CUMMINGS: Yes, Judge. That's why --

16 THE COURT: All right. I just want to make
17 sure. We'll take a recess. Let me know when you're
18 ready. We'll be in recess.

19 (Recess from 3:19 p.m. to 3:38 p.m.)

20 (Open court, Defendant present, no jury)

21 THE COURT: Both sides ready to proceed
22 outside the presence of the jury?

23 MR. BRISSETTE: Yes, Your Honor.

24 MR. CUMMINGS: Yes, Your Honor.

25 THE COURT: All right. Mr. Cummings, you

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1 have the floor.

2 MR. CUMMINGS: Thank you, Your Honor.

3 I'd like to ask Agent Steele some questions
4 on voir dire.

5 VOIR DIRE EXAMINATION

6 BY MR. CUMMINGS:

7 Q. I put your -- or the State's notebook back in
8 front of you, Agent. I want to ask you -- and all of
9 the questions I want to ask you about that are in that
10 book have got crime scene markers depicted in them.
11 They are State's Exhibit 63, 77, 78, 86, 129, 146, 147,
12 148 and 153. And I realize you're not keeping up with
13 me, but that was for the purposes of the record. But
14 have you looked at those?

15 A. Yes.

16 Q. Okay. Obviously, those markers were put by
17 investigative personnel, correct?

18 A. Yes.

19 Q. Were they put by you?

20 A. No.

21 Q. Did they have anything to do with -- strike
22 that.

23 Were they present as you were recording the
24 scene with your camera?

25 A. They were -- well, I mean, they were -- they

1 were present at various times during the investigation.

2 Q. Okay. Were they put there as a part of your
3 investigation?

4 A. They were there as part of the overall origin
5 and cause investigation.

6 Q. Do you know who actually was using those
7 markers?

8 A. I think the canine handler was using it.

9 Q. Are there photographs of the same locations
10 that are depicted in those photographs that I
11 mentioned -- and I can go back through them if you need
12 me to -- without the markers?

13 A. A specific of that location?

14 Q. Yeah. In other words, was there a photograph
15 taken -- sometimes a photograph is taken without the
16 marker of -- of piece of evidence, and then the marker
17 is placed, and a similar or almost identical photograph
18 taken with the marker in place. Was that the procedure
19 you used?

20 A. There would have been photographs -- overall
21 photographs taken of those areas, but prior to those
22 markers being placed there, they wouldn't have
23 specifically pinpointed that spot.

24 Q. Okay.

25 MR. CUMMINGS: It's all the questions I'm

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1 going to have on that, Your Honor. May I pass the
2 notebook to you and give you those photo numbers?

3 THE COURT: Yes. If you'll give me a
4 moment -- and you're looking at 63, 77, 78, 86, 129,
5 146, 147, 148 and 153. And what is your objection
6 concerning those exhibits?

7 MR. CUMMINGS: That they do not truly and
8 accurately depict the scene. They've been modified by
9 investigative procedures. And I misspoke on 86. It
10 looks like 86 on my pad, but it's actually 81.

11 THE COURT: 81.

12 MR. CUMMINGS: Yeah. I just couldn't read
13 my writing, Judge. It's 81.

14 THE COURT: And your objection is that the
15 modification concerns the investigation tab that is
16 depicted in there that was placed there by some person
17 or persons during the investigation regarding the cause
18 and origin; is that correct?

19 MR. CUMMINGS: Yes, Your Honor.

20 Apparently, according to Agent Steele, those were put in
21 by Lieutenant Joey Langford, the -- correct, sir?

22 THE WITNESS: Yes, I -- that -- that --
23 that's my assumption. He had some of those numbers.

24 THE COURT: As I look in the binder here,
25 there is not an 86. Is that 81 that you were referring

1 to?

2 MR. CUMMINGS: Yes, Your Honor. That was
3 the one that I misread off my notes.

4 THE COURT: All right. Your objection
5 regarding exhibits 63, 77, 78, 81, 129, 146, 147, 148
6 and 153 are overruled.

7 MR. CUMMINGS: Thank you, Your Honor.

8 THE COURT: The Court has conducted and
9 independent investigate -- examination of the exhibits
10 outside the independent examination outside the presence
11 of the jury.

12 MR. CUMMINGS: I would like to ask my
13 questions here.

14 THE COURT: You may.

15 MR. CUMMINGS: Due to the nature of these
16 photographs.

17 Q. (BY MR. CUMMINGS) I want to direct your
18 attention, Agent, to State's Exhibit 143, 144, 160, 161,
19 and 162. Were you -- are these photographs that you
20 actually took?

21 A. No.

22 Q. Were you present when they were taken?

23 A. Yes.

24 Q. The photographs, each and every one, appear to
25 depict a human body that has been placed on either a

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1 white sheet in the case of -- or white plastic sheet in
2 the case of State's Exhibit 143 and 144, or a black bag
3 or sheet in the case of 160, 161 and 162; is that
4 correct?

5 A. Yes.

6 Q. These photographs appear to have been taken
7 after the subject matter of the photographs have been
8 moved from their original locations in which they were
9 discovered; is that correct?

10 A. Yes. They've been taken from the debris and
11 placed in body bags.

12 Q. Okay. In the case of the -- 143 and 144 --
13 okay -- that's a bag as well then?

14 A. Yes.

15 Q. Did you observe the subject matter of these
16 photographs being moved from their original location to
17 the body bags?

18 A. Yes.

19 Q. Are the -- were the photographs taken in -- at
20 the time they were moved?

21 A. Yes. They were immediately removed from the
22 debris to the body bag and -- and photographed.

23 Q. There in the scene?

24 A. At the scene.

25 Q. Okay.

1 MR. CUMMINGS: Your Honor, the objections

2 that we have to State's Exhibit 143, 144, 160, 161 and
3 162 are twofold. We object on the basis that these
4 photographs do not depict evidence in the state in which
5 it was discovered. It's been modified by the
6 investigators. Therefore -- I hesitate to use the word,
7 but I can't think of another one -- posed photographs.
8 Okay? That's my -- I can't think of a better -- a
9 different word.

10 And the second objection we have is that
11 they're obviously much more prejudicial than probative,
12 and so we make an objection based upon 403, 404.

13 THE COURT: State, do you have a response?

14 MR. BRISSETTE: We do, Your Honor. First,
15 they're not posed photographs. They are the bodies --
16 the only posing that's done was by the fire and by the
17 injuries themselves inflicted by, the State's position,
18 Mr. Hummel in this case.

19 Second, they start the chain of custody.
20 As the Court notes outside the presence of the jury, the
21 Defense has agreed not to stipulate to our offer of
22 proving up identity of the victims, so we have to start
23 the chain through the Medical Examiner's Office in order
24 to collect the DNA to link up the chain of custody.
25 Those are the first photos, those exhibits that we just

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1 talked about by Mr. Cummings, showing the bodies being
2 placed in the body bags. The next step is the Medical
3 Examiner's Office.

4 Third, it corroborates the Defendant's
5 confession.

6 THE COURT: All right. Regarding -- your
7 first objection is overruled.

8 Regarding the 403 objection you've made,
9 the Court has conducted the balancing test, in addition
10 to the proffer that there will not be a stipulation with
11 regard to the identity or the individuals, and the
12 explanation given by the State does play a factor. Your
13 objection regarding 403 is overruled.

14 MR. CUMMINGS: Thank you, Your Honor.

15 The fact that my client is asserting his
16 right to have a plea of not guilty entered and put the
17 State to their proof, I don't understand where the
18 stipulation part enters into.

19 THE COURT: Well, with regard to no
20 stipulation entered, stipulation is the -- the burden of
21 proof relies strictly on the State. The State must
22 sustain the burden of proof beyond a reasonable doubt.
23 And to establish that proof beyond a reasonable doubt,
24 the State is -- is asserting that they are planning to
25 show the chain of custody from a location in the manner

1 and means and the correct -- and the steps that it's
2 doing so to ensure the accuracy of any scientific
3 evidence that may come out later, for the purposes of
proving their case by the burden that they must sustain.

And, accordingly, under the examination set
6 forth and the reasoning provided by the State, the Court
7 finds under 403 your objection is overruled.

8 MR. CUMMINGS: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 MR. CUMMINGS: I'm ready to proceed with
11 the jury. May we enter our deal with the exhibits in
12 front of the jury --

13 THE COURT: I'm sorry. Say that again, Mr.
14 Cummings?

15 I'm going to state that -- that the
16 exhibits are admitted and that your objection is
17 overruled.

18 MR. CUMMINGS: Okay.

19 THE COURT: Do you require anything more
20 than that?

21 MR. CUMMINGS: Will you -- Mr. Moore's
22 reminded me that we have -- I guess this falls under the
23 purview of the subject matter we covered in pretrial
24 hearing. I want to make sure we preserve our objection
25 from that portion of the trial as well.

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1 THE COURT: Yes. And that -- and that is a
2 continuing objection, and I've already granted a running
3 objection with regard to those matters.

4 MR. CUMMINGS: And finally, Your Honor, we
5 have no objection to the other ones, the -- the
6 photographs that we haven't been dealing with in this
7 hearing outside the presence.

8 THE COURT: All right. So what I'll state
9 is that 15 and 16 are admitted, 23 through 31 are
10 admitted, 33 through 58 are admitted, 60 through 84
11 admitted, 87 through 139 are admitted, 143 through 153
12 will be admitted, 156 admitted, 160 through 170
13 admitted.

14 And do you want me to specifically identify
15 143, 144, 160, 161 and 162 in the presence the jury?

16 MR. CUMMINGS: Not necessarily.

17 THE COURT: All right. Anything else needs
18 to be taken up by either side before we bring in the
19 jury?

20 MR. BRISSETTE: Can you give Angie about
21 two minutes to catch up on her list, Judge. I think
22 she'd be happy for all of us.

23 THE COURT: Very well.

24 (Recess from 3:53 p.m. to 3:58 p.m.)

25 (Open court, Defendant present, no jury)

1 THE COURT: Are both sides ready to proceed
2 with the jury?

3 MR. CUMMINGS: Yes, Your Honor.

4 THE COURT: Bring in the jury.

5 (Jury present)

6 THE COURT: All right. Members of the
7 jury, Exhibits 15, 16, 23, 31 (sic), 33 through 58, 60
8 through 84, 87 through 139, 143 through 153, 156, 160
9 through 170 are admitted.

10 (State's Exhibit Nos. 15, 16, 23-31, 33-58,
11 60-84, 87-139, 143-153, 156, 160-170 admitted)

12 THE COURT: You may proceed.

13 MR. BRISSETTE: May they be published at
14 some point as well, Your Honor.

15 THE COURT: They may.

16 DIRECT EXAMINATION (Cont'd)

17 BY MR. BRISSETTE:

18 Q. Special Agent Steele, I want to start with
19 State's Exhibit 14. The members of the jury, prior to
20 you coming in, had an occasion to see the outside of the
21 structure, but I want to show you 14 and then ask you a
22 question about -- about 15 going into 16. What are we
23 looking at here on State's 15 and 16?

24 A. Well, you -- the fire has vented through the --
25 the window, and you had a lap siding, a wooden lap

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1 siding that was covered with an aluminum siding
2 basically, and that -- that venting fire and gas has
3 melted the -- the siding, the aluminum siding and the
4 aluminum gutter and penetrated the soffit.

5 Q. And do you find poles, then, of aluminum at the
6 base of the foundation there?

7 A. Yes.

8 Q. If we could start our interior exam in the --
9 on the A side and what's depicted on State's 5 as the
10 yellow room. Can you take us through -- and for
11 everybody's benefit, I don't have the hundred or so
12 photos we've talked about. There's a selection here.
13 So if you could, when the next photo comes up, just call
14 out the exhibit number and tell us what you see as part
15 of it. Is that okay?

16 A. Yes, that's fine.

17 Q. State's 36, what are we looking at here, sir?

18 A. That's looking north into the -- the front door
19 that enters the basic center of the residence.

20 Q. State's 38, where are we here, sir?

21 A. That's inside that -- that den living area,
22 great room area that I was talking about earlier. A
23 large number of -- of children's toys, a very high
24 volume of fuel because of the plastics and things of
25 that sort, but no damage to those -- those fairly

1 volatile fuel sources.

2 MR. BRISSETTE: Your Honor, with the
3 Court's permission, can Deputy Martinez turn off the
center switch again, please?

Q. (BY MR. BRISSETTE) What are fuel packages,
6 Special Agent Steele?

7 A. Well, fuel packages are just those things that
8 are -- that are present in a structure, a residence,
9 that will burn. This is a -- is a very large amount of
10 fuel because you're looking at -- at plastics and things
11 of that sort, and those are -- those are a very, very
12 good fuel source.

13 Q. When we look at something like State's Exhibit
14 38, there appears to be a -- a Christmas tree on the
15 left side of the photo and items of a wood-based
16 product, I believe, taped to the wall in the foreground
17 there. What's that?

18 When you look at the room and look around
19 the room itself, can you make any observations as to
20 where the heat may have been in the fire as it's banking
21 down and whether or not stuff's been consumed or not as
22 you look through a residence such as this?

23 A. Yes. When you have a fire that -- you -- you
24 have superheated gases that come off the fire, and they
25 rise to the ceiling. And those gases then spread

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1 laterally across the ceiling until they come to an
2 impediment.

3 Once they are within that impediment, then
4 they'll continue to build up in that area until they get
5 below that impediment and -- and flow out; or if -- if
6 they don't get to the bottom of the impediment, they'll
7 continue to build in that space. And that space will
8 reach temperatures anywhere from 1200 to 15 or 1600
9 degrees.

10 Anywhere that layer of gas is, those
11 temperatures are going to -- to thermally damage
12 whatever fuel is there. So you can -- you can see what
13 we call a line of demarcation on that where you have
14 damage where that superheated layer of gas extended, and
15 below that you'll see undamaged area.

16 So that is what we saw in that room. We
17 saw paper product, plastic items high on the wall that
18 were -- were melted, they were thermally damaged; and
19 below that, there just wasn't any damage. But it was
20 indicative that -- that we did not have fire in that
space. All we had was the hot gases.

22 Q. As we go through this -- the exhibits for the
23 rest of the day this afternoon, Special Agent Steele,
24 when we come to an exhibit with a demarcation on it,
25 would you be considerate and point that out to the jury

1 and show them what we are talking about?

2 A. Yes.

3 Q. Is the demarcation line different heights based
4 on the confinement space that the gases are in?

5 A. It's -- it's at different heights based upon
6 the size of the space, based upon how close to the
7 origin of the fire it may be. As you get further away
8 from the fire, those -- those gases lessen, they -- they
9 cool, different things happen. But you -- you -- you
10 will see different layers, different heights, of that --
11 those demarcation lines.

12 This is just moving further to the east
13 from that front door just continuing to show that there
14 just was never any high heat near the floor. There was
15 never any evidence of any open flame burning in that
16 area. All of those -- those toys and items were -- were
17 plastic or light combustibles, paper products, things of
18 that sort.

19 You notice that the walls are a wood
20 paneling, and wood paneling is very susceptible to -- to
21 burning, so we -- I'm -- I'm very comfortable that there
22 was never any fire, actual flaming -- open flaming
23 burning in that -- in that space.

24 Q. And that's State's Exhibit 39, correct, sir?

25 A. State's Exhibit 39, yes.

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1 State's Exhibit 40, that is a view from the
2 east end of this space looking back towards the front
3 door and that window in the west wall. As you see, the
4 window is -- is intact, and -- no, I'm sorry. It is
5 still looking to the east. But the window in the east
6 end is still intact, and we're seeing the same effects
7 moving to the east.

8 The further east we got, we -- we continued
9 to see the -- those same effects, no fire in the room,
10 damage only of high levels where that superheated gas
11 collected, but as we move to the east, that area of
12 damage did lower into the room some.

13 Q. Once again, showing the light chemical -- light
14 combustibles that are here in State's Exhibit No. 41,
15 sir?

16 A. Yes, sir, that's correct.

17 Q. State's 42, do you recognize the doorway that's
18 here on State's 42?

19 Let me ask it this way, Special Agent
20 Steele: Do you recognize the plate glass window here in
21 the front of the structure in State's 42?

22 A. Yes. That is -- that is the view looking
23 back to the west.

24 Q. In looking at what appears to be a computer
25 monitor here in the center of 42, can you explain what

1 we're seeing with the -- it appears to be deformed. Is
2 that what you saw in person that day?

3 A. Yes.

Q. Do you have an opinion as to what might have
caused that?

6 A. Just -- just the heat. There -- there was
7 enough heat to soften that material but not enough heat
8 to actually ignite any of the combustibles.

9 Exhibit 43 is a view of the -- the doorknob
10 on the front door showing that the fire department
11 forced the entry into that area and showing that it was
12 closed during the early portion of the fire.

13 Q. And that's your understanding from your initial
14 evaluation. As part of your duties, do you talk to the
15 individuals that made the scene first?

16 A. Yes.

17 Q. And you interview them yourself to reach your
18 determination as to the origin and cause?

19 A. That is part of the process, yes.

20 Q. 44, are we looking back out that same front
21 door that we just saw the lock from?

22 A. Yes. The Christmas tree to the -- to the right
23 in the photograph, and then looking back out the front
24 door.

25 Q. There appears to be holes in the top of the

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1 photo in what would have been, I guess, the ceiling, the
2 Sheetrock.

3 A. Those were -- suppression personnel put those
4 there to verify there wasn't any fire in the attic.

5 Q. What is it to check for extension of fire?
6 What does that mean in the fire service?

7 A. That's -- that's what they're doing. They --
8 when you got a fire burning in space, it may not just be
9 contained within that space. It may have gotten into a
10 wall; it may have gotten into a ceiling.

11 And once it gets into a ceiling, it can --
12 can spread into the attic space and literally burn the
13 entire structure without the suppression personnel below
14 realizing it, so they always check for extension.

15 Q. Special Agent Steele, State's Exhibit 47
16 appears that we've switched rooms now. Is that
17 indicative of the -- the map indicator on the lower left
18 of State's 47?

19 A. Yes.

20 Q. Is the red cooler that's -- the Igloo cooler
21 that's there in the center of 47, what room is that in,
22 that doorway?

23 A. That's in the kitchen.

24 Q. There appears to be some different fuel loads
25 or fuel packages in this room. Based on the condition

1 of them, what observations do you have, if any, to make
2 about these?

3 A. Well, the -- the same conclusions regarding the
4 west area in that center space. There were a lot of
5 combustible materials that were not damaged by direct
6 flame impingement, which indicated that there was never
7 any fire within that space.

8 Now, the -- the smoke and soot stain from
9 that layer of gases that I was talking about earlier is
10 to -- at a much lower level at this space than further
11 to the west in the space we discussed earlier.

12 Q. There appears to be a natural-gas heater here
13 behind the -- from the Lazy Boy that's on the right side
14 of State's 47. Did you have a chance to investigate
15 that natural-gas heater?

16 A. Yes, I did.

17 Q. And what conclusions can you draw, if any,
18 about its working condition?

19 A. It was in working condition. It was clean, and
20 there was no evidence that it was involved in any way in
21 the fire.

22 Q. If -- in a hypothetical world, had that heater
23 in State's 47 been involved, what would you expect to
24 see of the fuel packages or the wood paneling behind it?

25 A. I would expect the wood paneling to be

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1 consumed. I would expect the -- the stuffed chair in
2 front of it to be consumed. I would expect the third
3 fuel package to the left, the -- the clothes and -- I
4 believe that was another chair. I would expect that to
5 be heavy damaged and probably consumed if that was
6 the -- where the fire originated.

7 Q. There were other natural gas heaters throughout
8 the residence; is that correct?

9 A. Yes, that's correct.

10 Q. Did you inspect all those as part of your
11 origin and cause investigation?

12 A. Yes, sir, I did.

13 Q. And were you able to reach the same conclusion
14 that they were not involved in the cause of the fire?

15 A. Yes, I was.

16 Q. State's 49, sir, what are we looking at here?

17 A. That is the -- the northeast corner of that
18 brown area, and that is the access to the renovated
19 garage area and laundry room. Most immediately, into
20 the laundry room and then into the -- the renovated
21 garage.

22 Q. And then once again, I believe we have given
23 observation as to the plastic surrounding what appears
24 to be a TV in this picture?

25 A. Yes, that's correct.

1 Q. Is it soft and melted like we see here?

2 A. Yes. The -- the -- those type plastics will
3 soften at a fairly low temperature, probably 300
4 degrees, maybe less than that. So we -- we obviously
5 had hot gases at the ceiling level, and we did have some
6 radiant heat from those -- those hot gases that would
7 soften that, but it not -- it was never enough to -- to
8 ignite even the light combustibles. You see the -- the
9 paper product light combustibles on the wall directly
10 behind the -- the television that are still intact and
11 in place, and they -- they were never ignited.

12 Q. When you look at a photo like we have in the
13 yellow room, the front room there, where there's a
14 lighter color on the wall that appears to be a square
15 surface, what is that common -- what is that indicative
16 of to you when you look at stuff?

17 A. That would be indicative of -- of a light
18 combustible, a picture hanging, something like that that
19 was on the wall that got hot enough that it fell off the
20 wall, but -- but didn't ignite and -- and left a clean
21 spot on the wall. It -- it actually protected the wall
22 from the smoke and soot deposition, and at some point
23 later in the fire, actually fell, and it -- it leaves a
24 clean area.

25 Q. State's 60, is this a close-up shot of that

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1 heater you talked about a little while ago?

2 A. Yes, sir, it is.

3 Q. 61, a top view of the heater?

4 A. Yes.

5 Q. There appears to be a single gain electrical
6 outlet --

7 A. Yes.

8 Q. -- behind it.

9 Did you do an electrical exam? I know we
10 talked about the outside panel. Did you look at the
11 electrical outlets in the system that was inside the
12 structure itself?

13 A. Yes. We examined all of the electrical
14 outlets, light switches, any possible accidental
15 emission source for the fire was examined.

16 Q. With respect to the electrical system in the
17 house, was it the same condition of unremarkable as
18 compared to the outside panel of the house?

19 A. It -- it was unremarkable. It -- it had been
20 impacted by some heat and -- and some -- some flame, but
21 it was unremarkable. There was no evidence of any fire
22 originating within that service panel, no fire
23 originated even in the area of the service panel.

24 Q. State's 65, sir?

25 A. That's a view looking to the north from that

1 doorway we were talking about in the last photograph
2 looking into the -- the laundry room. It -- it shows
3 you the line of demarcation that I discussed earlier.
4 This is your line of demarcation. You can
5 see a distinct line difference between this area and
6 this area below. You can see it somewhat here, but
7 that's what we call a line of demarcation.

8 Q. And in State's 65, above the line of
9 demarcation on the side where that electrical panel is,
10 there appears to be a -- a stud frame wall that's got
11 some bare studs; is that correct?

12 A. Yes, sir, that's correct.

13 Q. Do you have an opinion as to whether or not
14 there was any wallboard on those studs during the fire?

15 A. They were covered with wallboard.

16 Q. And how can you tell by looking at the photo?

17 A. Well, you -- you can see that you've got
18 wallboard here, but at -- at the time, just looking at
19 the photograph, you can see some of the gypsum that has
20 collapsed onto the floor.

21 You can see the hanging insulation from
22 above, and the fact that you have clean wood, if -- if
23 this had been bare during the fire, you would have
24 charred or smoked and sooted wood. So all of those
25 things tell you clearly that it was covered.

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1 Q. State's 68, you see the different -- can you
2 show the jury the difference between clean and charred
3 wood in using this example of the ceiling?

4 A. Yes. Here you have, as you can see, charred
5 members here, and this area here is clean. So just
6 looking at that, you can see that you had gyp on the
7 bottom, which protected it, but you did have some fire
8 in the attic, some -- some heat in the attic that --
9 that discolored the top of this joist.

10 So the same over here. You got clean here,
11 but this is blackened, and that's -- that's how you can
12 tell.

13 Q. Is it indicative of a heat pattern here where
14 I'm dragging my mouse on the -- the ceiling joist that's
15 in the top of the photo that there might have been
16 some -- something protecting it like insulation at some
17 point during the fire?

18 A. Yes, that's correct.

19 Q. State's 71, is that the picture of the interior
20 service panel to the house?

21 A. Yes, sir, that's correct.

22 Q. And you found that to be in -- panel to be in
23 good working order as well?

24 A. Yes.

25 Q. State's 73, did you find a woman's purse on top

1 of one of the laundry room pieces of equipment, the
2 washer and dryer there?

3 A. Yes, we did.

4 Q. State's 75, what are we looking at here, sir?

5 A. That's a view to the west from the laundry room
6 back into that renovated garage, double garage, and that
7 would have been the double poster bed that was against
8 that west wall.

9 Q. State's 77, is this that same bed you're
10 talking about, sir?

11 A. Yes, sir, that's correct.

12 Q. And there appears to be some light blue items
13 and a yellow No. 4 on the picture. Is that something
14 that the investigators brought with them that day to the
15 scene?

16 A. Yes, it is.

17 Q. State's 79, still the same room. We're talking
18 about the orange room here; is that correct?

19 A. That's correct.

20 Q. There's a heater, I believe, in the bottom of
21 State's 80. Did you have a chance to examine that
22 heater as well?

23 A. Yes, I did.

24 Q. And was that heater in good working order?

25 A. Yes, it was.

225

1 Q. What are we looking at here, sir, on State's
2 87?

3 A. I may need to look closer. I may need my
4 glasses.

5 Q. If -- if I could take you ahead, Special Agent
6 Steele, I think it might put it into context.

7 A. Okay. That would be great.

8 Okay, yes (indicating).

9 Q. Do you know where we're at now?

10 A. Yes. That's -- we're actually on the -- on the
11 bed that was in that area.

12 Q. How would -- in State's 88, there are
13 certain -- you talked about this poster bed. Most of
14 the bed was consumed, was it not?

15 A. A large portion of it was, yes.

16 Q. How are items such as this -- it looks like a
17 piece of bedding material that says Harley Davidson on
18 it. How was that not consumed? Do you have a -- a
19 reason for that?

20 A. It was protected by some object that was on it.
21 In this case there was a body on that portion of the
22 mattress.

23 Q. State's 89, are we in the same area of the bed?

24 A. Yes.

25 Q. And State's 90, were you able to make a

1 determination of what's being held by the investigator
2 with the glove on?

3 A. It was a watch.

4 Q. 91, is that the backside of the service panel
5 you talked about being the interior service panel?

6 A. Yes.

7 Q. And 92, that's a -- a close-up of the heater
8 you were talking about in this room?

9 A. Yes, sir, that's correct.

10 Q. Special Agent Steele, what room are we in now?

11 A. That's in the kitchen, which was just south of
12 the brown room here.

13 Q. Would this be a -- the rear door then in the
14 left side of State's 93?

15 A. Yes, sir.

16 Q. State's 94, do you see a demarcation line of
17 heat in this room, sir?

18 A. It's -- you can see here a pattern demarcation
19 from fire come -- burning out of this room to the west,
20 and -- and basically even across here. You see clean on
21 these cabinets, but above that, you've got considerable
22 damage. So this was in a -- a fairly protected area,
23 and above that you had your hot gases and -- and some
24 flame.

25 Q. Looking at State's Exhibit 98 -- and I'm going

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1 to take you forward, I believe, to show this. In 98, do
2 you see a demarcation line in this one, sir?

3 A. Yes. It's a -- a clear demarcation -- excuse
4 me -- across this wall across the front of the
5 refrigerator.

6 Q. Would you consider that drawing that's on the
7 refrigerator and that -- I guess, the hand wash towel in
8 that picture that's on there to be light combustibles?

9 A. Yes.

10 Q. Had the heat gotten lower to that, would you
11 expect those to have been consumed and ignited -- reach
12 certain ignition temperatures at some point?

13 A. Yes.

14 Q. What's it mean for something to reach its
15 ignition temperature?

16 A. All materials -- all materials burn. They burn
17 in different ways, but a solid -- paper, wood,
18 plastic -- they've got to be heated to an ignition
19 temperature. They got to be heated to a point that
20 they're actually gassing off, they're creating flammable
21 gases.

22 And there are two ways to ignite those
23 flammable gases. You can ignite them with an open
24 flame, which would be a pilot ignition; or they can be
25 ignited if they reach their ignition temperature. The

1 ignition temperature is higher than the pilot ignition.
 2 You would have to get it to a much higher temperature if
 3 they're just going to spontaneously burn.

But when you have open flame, you don't
 need the -- to get them to that temperature. But
 6 generally speaking, you're -- you're talking 4 or 500
 7 degrees to get it to its ignition temperature.

8 Q. State's Exhibit 100, is there the demarcation
 9 line again here behind that back door?

10 A. Yes. That would be the line of demarcation.
 11 Your smoke layer would be at this level, and below that,
 12 the air would have been fairly clear.

13 Q. In State's 101, what is this object here on the
 14 right side of the photo, sir?

15 A. That's the southside of the refrigerator in one
 16 of the earlier photographs, and what you see here is
 17 this is oxidation. It's the introduction of -- of flame
 18 and heat to that metal surface, which eventually burns
 19 the paint off the exterior, and then the metal begins to
 20 rust.

21 Oxidation is nothing more than -- than
 22 rust, but it creates this appearance, and it is
 23 dependant upon the length the heat impacts it, how high
 24 the heat is, things of that sort. So you can see even
 25 some demarcation here in -- in this pattern. You've got

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1 clean wall here, but you can see that you had fire
 2 coming out of this area burning across and around this
 3 refrigerator.

4 Q. Would the path of the smoke or the path of the
 5 heat with this be induced by having that open door in
 6 the back?

7 A. Yes, that would impact it, yes.

8 Q. How so?

9 A. Well, fires are either fuel controlled or
 10 ventilation controlled, and -- and if -- if a fire is --
 11 is burning through a fuel source and it -- it begins to
 12 get air, then it's going to intensify the burning. But
 13 it's definitely going to draft through open ventilation
 14 areas.

15 And especially in this case where you've --
 16 you've got an open door in this room, and to the south
 17 of this area, you've got windows that are ventilated.
 18 So now you're creating a natural drawing effect of -- of
 19 the air through there, so it's going to move to those
 20 openings.

21 Q. State's 105, we've now entered, I believe, the
 22 blue room, is that correct, that's indicative on the map
 23 here?

24 A. Yes, sir, that's correct.

25 Q. And once again, another natural-gas heater.

1 Did you examine this one as well?

2 A. Yes, I did.

3 Q. And it was in good working order?

4 A. There was no evidence that -- that fire
 5 originated anywhere around that -- that object.

6 Q. In addition to looking at things like the
 7 smoke -- the heaters and stuff, do you look for smoke
 8 detectors?

9 A. Yes.

10 Q. Did you find any in this case?

11 A. We -- we did not find any smoke detectors.

12 Q. Did you find something beeping during your
 13 investigation you thought might have been a smoke
 14 detector?

15 A. We did, and it turned out that it was one of
 16 the child's toys that was -- had a battery in it and was
 17 actually beeping.

18 Q. Were you able to turn it off?

19 A. Yes.

20 Q. You mentioned earlier, as you were doing your
 21 initial assessment, that this room was -- appeared to
 22 you to be a room that had a lot of storage material in
 23 it?

24 A. Yes.

25 Q. Was this room the most cluttered of all of

231

1 them?

2 A. Yes, it was.

3 Q. This -- what appears to be a hose line in the
 4 photo 106, was the pro-pack and a hose line connected to
 5 it for most of the day while you were there?

6 A. Yes. We continued to run into hot spots as we
 7 dug the scene.

8 Q. Is that a -- what's known in the fire service
 9 as a red line as well that's in the house?

10 A. Yes.

11 Q. In State's Exhibit 110, Special Agent Steele,
 12 do you see the refrigerator you talked about a little
 13 while ago?

14 A. Yes, that's the refrigerator.

15 Q. As you walk through it and -- and work through
 16 this in an orderly fashion, in a scientific fashion that
 17 you have to do to do an origin and cause, not only do
 18 you take in the refrigerator, do you also take in the
 19 wall conditions on the other side to see how the
 20 ventilation patterns may have vented through the
 21 structure?

22 A. Yes.

23 Q. And do you see areas that would be consistent
 24 with your ventilation theory in State's Exhibit 110?

25 A. Yes. All the -- the -- the damage on this wall

1 and even above here through this opening, the reason
2 those -- the cabinets were still clean was because of
3 the ventilation effect that was -- that was pushing
4 through this opening and basically out that back door,
5 but was not allowing the fire to drop below that -- that
6 level.

7 And you've got some -- some very heavy
8 damage on this wallboard here and here, and that was
9 from the flow of the gases and fire going through
10 these -- through these openings.

11 Q. As you go from this room that's been labeled on
12 State's Exhibit 5 and State's 110 as the light blue room
13 and you work your way back to the -- the bathroom in the
14 hallway there, does the charring and the burn get deeper
15 and more intense as you're looking at it?

16 A. Yes.

17 Q. State's Exhibit 115, sir, what are we looking
18 at here?

19 A. This is looking from the blue room into the
20 hall and ultimately into the southeast corner room.

21 Q. State's Exhibit 116, sir, do you see the heater
22 that was in the blue room in this photo?

23 A. Yes, it's in this bottom corner.

24 Q. What are we looking at directly in front of --
25 in the center of the image here in 116 to the right of

233

1 the yellow No. 2 there?

2 A. This was a -- a small closet in that hall.

3 Q. Is the door still partially there?

4 A. It's partially there, but it -- it was in large
5 part consumed.

6 Q. And State's 117, what are we looking at here,
7 sir?

8 A. That's a view to the east back into the -- the
9 bathroom.

10 Q. In 119, do you see some of the plumbing, the
11 vent pipe, exposed in this photo?

12 A. Yes.

13 Q. And in the right side of the photo in 119 --
14 and I believe as we go forward with some of these
15 photos, in 123 that appears to be a -- do you have an
16 opinion as to what the circle is at the top of the
17 photo?

18 A. Here?

19 Q. Yes, sir. In the control that comes out of it?
20 Let me back up for you.

21 A. I believe it's the -- the -- the shower.

22 Q. Let me ask it this way, Special Agent Steele:
23 Is it -- you've looked through a number of photos in
24 this case. Without the rings around that -- that
25 indicate what room they're in, do fire scenes -- do the

1 pictures run together if you're not careful in looking
2 at them?

3 A. They all look like fire scenes.

4 Q. What would you expect to see if -- if a bathtub
5 had a shower curtain and stuff around it? Would you
6 expect to see -- if fire was in that room hot enough to
7 melt it, would you expect to see drop-down from it?

8 A. In this case I -- I would expect to see some
9 because you had more heat high, but -- but there was
10 a -- a lot of debris in there. It really depends upon
11 how much burning you have.

12 If you've got kind of a total consumption,
13 then it's going -- it's going to consume even -- even
14 those type things. If you've got some high fire and you
15 got some early drop down, you may have survivability and
16 expect to see that.

17 Q. State's 124, once again, can you explain to the
18 jury what we're looking at here with the ceiling joist
19 here and how there's such a distinct line right here on
20 this one rafter?

21 A. It was -- it -- protected. You would have --
22 before the gyp failed, you would have had insulation in
23 those channels and fire above that, so you would have
24 had burning across the top of your joist. But the
25 insulation, for some period of time, would have

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1 protected this area. You can still see some gyp in
2 place, so the gyp failed late here and late enough
3 that -- that it didn't allow any burning on those --
4 those joists.

5 Q. As part of the National Fire Code, are there
6 ratings on wallboard?

7 A. Yes.

8 Q. How long it can withstand direct fire
9 impingement?

10 A. Yes, that's correct.

11 Q. Do you know what wallboard should fail at, how
12 long can it survive direct fire impingement, what it's
13 rated at, or is that -- you have to look at the actual
14 sheets that were used?

15 A. You'd have to see the original sheets. Based
16 upon when this house was built, you -- you'd really have
17 to look at the original gyp board that was put up. But
18 30 minutes is a -- kind of a rule of thumb, I guess.

19 Q. Was it held on with screws or nails, if you
20 recall?

21 A. Nails.

22 Q. Did the house have a gas or electric hot water
23 heater?

24 A. Gas, natural gas.

25 Q. In State's 126, were you able to make

1 observations and examination of the hot water heater
2 closet?

3 A. Yes. There was direct flame impingement into
4 the top of the -- of the closet. Quite a bit of the --
5 the door was -- was consumed, but the -- the actual
6 mechanisms of the water heater were still intact and
7 really undamaged. Most of the damage on that -- the
8 water heater was high and was -- was very obviously the
9 result of flame impacting into the -- the water heater
10 closet as opposed to fire originating in the closet and
11 burning out. So there was no evidence that this was the
12 origin of the fire.

13 Q. Had fire originated in the closet, as depicted
14 in State's 128, would you expect this common combustible
15 on top of the hot water heater to be consumed?

16 A. Yes.

17 Q. In State's 129, sir, which room are we looking
18 down towards now?

19 A. That's looking west into the southwest corner
20 bedroom.

21 Q. State's Exhibit 130, which room are we looking
22 at to now, sir?

23 A. That's the southeast corner bedroom.

24 Q. Can you take us through what we're looking at
25 here in 131, sir?

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1 A. The -- basically, you have a room that has gone
2 to flashover. And -- and what flashover means is that
3 the -- the room has burned to a -- a point that all
4 combustible -- combustible materials within that space
5 have ignited and are burning.

6 There's a -- was a bed here on the -- on
7 the left side of the picture. There was a TV video in
8 the corner here. You can see that the window frames
9 have been totally consumed. All the window glass is
10 out, all the aluminum -- aluminum window framing has
11 melted and -- and dropped. All of the exterior gypsum
12 is failed. All of the insulation is gone.

13 The fire has even pen -- begun to penetrate
14 the lap siding on the exterior of the house. The floor,
15 all of the carpeting and floor coverings have been
16 consumed, and there are actually burn-throughs into the
17 floor, which is indicative of a lot of fire for some
18 period of time for it to actually penetrate down.

19 Q. You understood this part of the house to be a
20 pier and beam structure; is that correct?

21 A. Yes.

22 Q. In 132, do we see some of that exterior siding
23 that's burned away or the wallboard -- excuse me -- the
24 lap siding that's on the outside that's part of the
25 original structure?

1 A. Yes, that's correct. In this area you can see
2 some holes here, here; so you -- you had a -- a raging
3 fire in this room for some period of time.

4 Q. And where my mouse is in the lower left-hand
5 corner of 132, were you able to make an observation as
6 to what this defect is here?

7 A. There was a hole that had burned through the
8 floor into the -- the crawl space under the house.

9 Q. And just below that hole that's burned through
10 the floor in 132, are these the bed springs?

11 A. Yes. That's -- that's what's remaining of
12 the -- the bed.

13 Q. The shovels and other instruments, are those
14 things that are brought in at your request for the
15 origin and cause investigation?

16 A. Yes.

17 Q. And what do you use those for?

18 A. We use those to remove the debris -- excuse me.

19 The debris is methodically removed layer by layer
20 generally so that we can get to different layers, we
21 can -- we can look at the layers and see when the -- the
22 burning occurred and -- and find evidence in those
23 layers that will -- will give us information about that
24 piece of evidence, whatever it might be.

25 Q. Is that called digging the fire out?

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1 A. Yes.

2 Q. State's 137, what are we looking at here, sir?

3 A. That's the -- the bed that was against that
4 north wall in that bedroom.

5 Q. When you arrived on scene, did you -- you
6 referenced earlier you made an initial walk-through with
7 your air mask on.

8 A. Yes.

9 Q. Or mask on.

10 At some point in time, did you or other
11 task force members make a decision or collectively to
12 obtain a search warrant?

13 A. Yes.

14 Q. The -- was a search warrant obtained at some
15 point?

16 A. Yes, it was.

17 Q. Do you know if the Medical Examiner's Office
18 and the -- the dig-out that you have been talking about
19 here took place before or after the search warrant was
20 signed?

21 A. All of those things took place after the search
22 warrant.

23 Q. In State's 145, sir, there are items that
24 appear to be not completely consumed as part of this in
25 this room; is that correct?

1 A. Yes.
 2 Q. Can drop-down of a fire protect certain things?
 3 A. Yes, it can.
 4 Q. How so?
 5 A. Well, if you have a -- a piece of gypsum board
 6 that falls into an area that is not yet burned, that
 7 gypsum board will protect that area from further
 8 burning.

9 The same is true with -- with heavier bolt
 10 type fuels, thick paper product. It may burn a long
 11 time and it may not all burn, so whatever is under it is
 12 going to be protected. So you do see that even in areas
 13 where you have flashover sometimes.

14 Q. And heading into the red room with State's 146
 15 and 147, where are we looking at here, sir?

16 A. That is the -- the doorway into the -- the
 17 bedroom, this southwest bedroom.

18 Q. Can you make an observation as to what the
 19 object is that's a big square object here in the center
 20 of State's 150?

21 A. Yes. That was the -- the bed, box springs and
 22 mattress.

23 Q. And the windows to the right side of State's
 24 150, is it your understanding those are the windows that
 25 Captain Wilson and his men went through to try to impact

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1 the fire in this room?

2 A. Yes.

3 Q. What observation did you have, in general, of
 4 this room on the southwest corner of the AD corner of
 5 the room as to whether or not there was any fire
 6 originating from this room?

7 A. The -- this particular room was the least
 8 damaged room in -- of the rooms where fire originated.
 9 But the -- the patterns that were in this room were
 10 indicative of fire burning into the room, but at the
 11 same time, there were patterns that were very indicative
 12 of a fire burning out of the room.

13 So -- so basically you had fire meeting
 14 around the doorway of this -- of this room from fire
 15 that had originated in the room and from the fire that
 16 was burning into the room from -- from the southeast
 17 bedroom.

18 Q. Were there one or more fires in this room?

19 A. I believe there were at least two that
 20 originated in -- in this area. There was -- there was a
 21 fire that originated on this north wall adjacent to one
 22 of the bodies that we located here. There was
 23 additional burning in the southwest corner that I
 24 examined. There was no evidence of fall down. It was
 25 in a very protected area, but there was -- was

1 considerable burning there, so -- so there were at least
 2 two areas of origin in this room.

3 Q. What does it mean that a fire may or may not
 4 communicate with another fire?

5 A. Well, communication just means that -- that the
 6 fire had the ability -- a direct line to go from point A
 7 to point B. If you can -- if you can show that there is
 8 no direct line between this fire at point A and this
 9 fire at point B, then -- then you can surmise that
 10 there're two separate fires.

11 If there is a clear communication, then --
 12 then you have to look at them and say, well, they
 13 probably weren't, or I can't say that there were two
 14 different fires, that it was one fire that went from
 15 here to here.

16 Q. The burning you saw in this southwest bedroom,
 17 the two separate areas of origin, did it appear that
 18 they communicated to you, in your professional opinion?

19 A. No. The communication -- there was not
 20 communication from the southeast bedroom to this two
 21 fires in the west end of this room. There was -- there
 22 was not clear communication between those two. And --
 23 and there was two distinct separate fires here and a
 24 third separate distinct fire in this room.

25 Q. So we talked about chasing a fire, looking for

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1 extension and pulling gyp board from the ceiling. Did
 2 you find any communication from the south side of the
 3 habitation to the north side of the habitation that
 4 takes us into that converted garage?

5 A. No. There -- there was no communication from
 6 the fires that originated in this end of the house to
 7 the fire that originated on this bed in the converted
 8 garage.

9 Q. You were present when they removed the remains
 10 of the individuals from this room, correct?

11 A. Yes.

12 Q. Did you have an occasion during the break to
 13 look at some of the photos that contained her body? It
 14 was a female, was it not?

15 A. Yes.

16 Q. Were you able --

17 A. In -- it was a female here.

18 Q. Yes.

19 A. Yes.

20 Q. Were you able to make observations of her
 21 hands?

22 A. Yes.

23 Q. Did it appear that she had any injuries to the
 24 insides of her hands?

25 A. Yes.

1 Q. Did it appear that she had any injuries to her
2 upper body?

3 A. Yes.

4 Q. And you've been a police officer, you've been a
5 special agent with the ATF for a number of years. Did
6 those injuries appear to be damaged in the upper body of
7 that individual and on her hands caused by thermal
8 damage or by some other means?

9 A. Some other means.

10 Q. And the determination of those other means is
11 best left for the Medical Examiner; is that correct?

12 A. That's correct.

13 Q. In State's 152, is this the secondary of origin
14 in and near this large wooden object that we're looking
15 at in 152?

16 A. Yes. This -- this was a dresser. These were
17 the -- the west windows of that room, but in -- in this
18 corner you can see basically a V pattern. You can see
19 fire burning from behind and under this dresser. And
20 once I pulled the dresser out and examined that, there
21 was no communication from this area to the fire in the
22 rest of the room.

23 So this was a -- a distinct area of burning
24 here. Again, you can see the V pattern indicative of
25 flame coming out from behind, and even a large portion

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1 underneath this dresser was consumed,

2 Q. Special Agent Steele, do you have an opinion as
3 to what this object is here on top of the dresser in
4 152?

5 A. That was a wooden rack for decorative swords,
6 is what it appeared to be.

7 Q. State's 163, sir, after the Medical Examiner's
8 office had removed the individuals from the residence
9 and you began your dig-out, do you go through the
10 different layers and sort where an individual might have
11 been to look for other evidence?

12 A. Yes.

13 Q. In 163, is that such a place where a body was?

14 A. Yes, it is.

15 Q. And is this the body of the adult female that
16 was at the residence?

17 A. Yes.

18 Q. State's 164, what are we looking at here, sir?

19 A. Clothing that -- that we found right there in
20 the area of the body that was blood soaked.

21 Q. Did you find a -- lack of a better term -- like
22 a Rubbermaid laundry basket in the area where the body
23 was?

24 A. Yes.

25 Q. And was the Rubbermaid laundry basket intact?

1 A. Partially intact, yes.

2 Q. What happened to the other part? Do you have
3 an opinion as to that?

4 A. It -- it was melted to the floor.

5 Q. Do you have an observation or opinion as to the
6 area that's not consumed down here at the bottom of 164
7 as well on the furniture?

8 A. That was a protected area. The -- the body was
9 laying against that and protected it from the fire.

10 Q. You've had a chance, without putting on the
11 screen, to see the injuries, both firsthand back on
12 December 18th and in the exhibits today, the body that's
13 up against that, the side that's in the air. Is that --
14 is that part of the body consistent with thermal damage,
15 thermal burns?

16 A. Yes.

17 Q. Okay. State's Exhibit 166, do you recognize
18 what 166 is, sir?

19 A. That was a -- a metal object we found in the
20 debris.

21 Q. And was that collected as well, in addition to
22 being photographed?

23 A. Yes, it was.

24 Q. And that's been on 166, 167 and 168 now; is
25 that correct?

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1 A. That's correct.

2 Q. In State's 169, was an area of this carpet also
3 collected as part of the evidentiary search warrant?

4 A. Yes, it was.

5 Q. And for what purpose would you collect that
6 carpet such as this?

7 A. DNA if -- obviously, at this point there was a
8 large amount of blood around the spot that was not
9 consistent with thermal injuries, and we would collect
10 it to verify the DNA of the deceased, but also to try
11 and identify DNA from a suspect.

12 Q. In looking at this area versus the area where
13 the individual was found in the AB, or the northwest
14 bedroom, with the amount of thermal damage to the
15 individual in that bedroom, would it be typical to find
16 blood loss in that room?

17 A. Yes.

18 Q. Is it atypical then, based on the amount of
19 thermal damage that you observed, based on your training
20 and experience, to see this amount of blood loss based
21 on the -- the minimal thermal damage that this
22 individual had?

23 A. I would have expected little or no blood loss
24 on this victim based upon the thermal damage.

25 Q. And finally, on State's 170, are we able to see

1 a little bit better line of demarcation here where the
2 body was in the room?

3 A. Yes.

4 Q. And do you recall which way the body was
5 positioned? Were the feet down here, or were the feet
6 left to right or right to left?

7 A. It was head right, feet to left.

8 Q. Were you -- throughout the day on December
9 18th, I think you mentioned earlier you were there until
10 the sun went down. There were other members -- other
11 assets that you had working with you that day, other
12 arson investigators. Did the arson investigators that
13 were there at the scene that day, were they able to make
14 a call to fire that everybody agreed with?

15 A. We discussed it. That's -- that's part of it.
16 If anybody has any issues, we -- we discuss them and
17 figure them out before we -- we make a determination,
18 but -- but the determination was, you know, unanimous
19 that this was an incendiary fire. There just wasn't any
20 question.

21 Q. And you're familiar with the Texas Penal Code.
22 Is an incendiary fire a arson in the State of Texas?

23 A. Yes.

24 Q. Did you -- were you able to rule out all
25 accidental causes to this fire?

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1 A. Yes.

2 Q. Only thing left is either act of God or
3 intentional fires, is it not?

4 A. Yes.

5 Q. No lightening strikes were in the area that
6 night?

7 A. No.

8 Q. Only thing you had was an incendiary based
9 fire?

10 A. That's correct.

11 MR. BRISSETTE: Your Honor, I think we've
12 reached a good stopping point for the night for us for
13 our presentation.

14 THE COURT: Members of the jury, we're
15 going to recess for the day. Please remember the
16 Court's previous instructions. Do not discuss this case
17 with anyone else or yourselves.

18 We will resume at 9:00 a.m. Please be here
19 at 8:45. Thank you very much. We'll see you tomorrow.
20 We'll be in recess.

(Proceedings adjourned at 4:55 p.m.)

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1 THE STATE OF TEXAS)
2 COUNTY OF TARRANT)

3 I, Angelica Taylor, Official Court Reporter
4 in and for the 432nd Judicial District Court of Tarrant
5 County, State of Texas, do hereby certify that the above
6 and foregoing contains a true and correct transcription
7 of all portions of evidence and other proceedings
8 requested in writing by counsel for the parties to be
9 included in this volume of the Reporter's Record, in the
10 above-styled and -numbered cause, all of which occurred
11 in open court or in chambers and were reported by me.

12 I further certify that this Reporter's
13 Record of the proceedings truly and correctly reflects
14 the exhibits, if any, admitted by the respective
15 parties.

16 WITNESS MY OFFICIAL HAND this the 25th day
17 of January, 2012.

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